Laws and Resolutions

OF THE

STATE OF MONTANA

ENACTED BY THE

Forty-fourth Legislature

In Regular

Session

Held at Helena, the Seat of Government

Regular Session

January 6, 1975 to April 19, 1975

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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OFFICERS AND MEMBERS

MONTANA FORTY-FOURTH LEGISLATURE 1975 SENATE

W. Gordon McOmber, President of the Senate
Carroll Graham, President Pro Tempore

30 Democrats
20 Republicans
—
50 Senators

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
Aber, L. M. (Larry)	228 Third Ave. No., Columbus 59019	36	Stillwater	Republican
Blaylock, Chet	502 3rd Avenue, Laurel 59044	35	Yellowstone	Democrat
Boylan, Paul F.	Star Route, Bozeman 59715	38	Gallatin	Democrat
*Brown, Robert J. (Bob)	Rt. 1, Whitefish 59937	10	Flathead	Republican
*Cetrone, V. E. (Gene)	2315 Broadwater Ave., Billings 59102	33	Yellowstone	Democrat
*Colberg, Richard A.	Box 2429, Missoula 59801	50	Missoula	Democrat
*Conover, Max	P. O. Box 46, Broadview 59015	30	Yellowstone	Democrat
Devine, John W. (Jack)	Park Garden Lane, Great Falls 59404	19	Cascade	Democrat
*Drake, Glen L.	860 Hiawatha, Helena 59601	16	Lewis & Clark	Republican
Dunkle, Frank	1725 Golden Avenue, Helena 59601	15	Lewis & Clark	Republican
*Etchart, Mark	Box 229, Glasgow 59230	2	Valley	Republican
*Fasbender, Larry	Rt. 1, Box 23, Fort Shaw 59443	17	Cascade	Democrat
Flynn, Elmer	Rt. 2, Flynn Lane, Missoula 59801	48	Missoula	Democrat
*Foster, Donald R.	Rt. 2, Lewistown 59457	24	Fergus	Democrat
Galt, Jack E.	Martinsdale 59053	23	Meagher	Republican
Goodover, Pat M.	803 Forest Avenue, Great Falls 59404	22	Cascade	Republican
*Graham, Carroll	Lodge Grass 59050	29	Big Horn	Democrat
*Greely, Mike	409 Strain Bldg., Great Falls 59401	20	Cascade	Democrat
*Hazelbaker, Frank W.	P. O. Box 430, Dillon 59725	41	Beaverhead	Republican
Healy, John E. (Jack)	624 W. Granite St., Butte 59701	44	Silver Bow	Democrat
Himsl, Matt	305 4th Ave. East Kalispell 59901	9	Flathead	Republican
*Jergeson, Greg	Box 8, Star Rt. 71, Chinook 59523	3	Blaine	Democrat
Kolstad, Allen C.	P. O. Box 648, Chester 59522	5	Liberty	Republican
*Lee, Robert E. "Bob"	1945 Florida, Butte 59701	43	Silver Bow	Democrat
*Lynch, Neil J.	2101 Harrison, Butte 59701	42	Silver Bow	Democrat
*McCallum, George	Niarada 59852	12	Sanders	Republican
McOmber, W. Gordon	Fairfield 59436	6	Teton	Democrat
Manley, John E.	Drummond 59832	14	Powell	Democrat
Manning, Dave	Hysham 59038	25	Treasure	Democrat
*Mathers, William L.	Box 267, Miles City 59301	26	Custer	Republican
*Mehrens, John (Sandy)	206 Evergreen, Anaconda 59711	45	Deer Lodge	Democrat
Murphy, Terry	Cardwell 59721	40	Jefferson	Democrat
Nelson, Harold C.	704 Third St. S.E., Cut Bank 59427	7	Glacier	Republican
Norman, Bill	440 Connell St., Missoula 59801	47	Missoula	Democrat
Olson, S. A.	Glendive Med. Center, Glendive 59330	28	Dawson	Republican
Regan, Pat	204 Mountain View, Billings 59101	31	Yellowstone	Democrat
Roberts, Joe R.	c/o Don's Men's Store, Libby 59923	11	Lincoln	Democrat
Romney, Miles	425 S. Third St., Hamilton 59840	46	Ravalli	Democrat
*Rosell, Antoinette Fraser	4200 Rimrock Rd., Billings 59102	32	Yellowstone	Republican
*Roskie, George F.	3440 Sixth Ave. So., Great Falls 59405	21	Cascade	Republican
*Seibel, Ann	2603 Spring Creek Dr., Bozeman 59715	39	Gallatin	Democrat
*Smith, Ed B.	R.R. 1, Box 11, Dagmar 59219	1	Sheridan	Republican
*Smith, Richard G.	P. O. Box 411, Columbia Falls 59912	8	Flathead	Democrat
Stephens, Stan	422 3rd St., Havre 59501	4	Hill	Republican
Story, Pete	Emigrant 59027	37	Park	Republican
*Thiessen, Cornie R.	Box 195, Lambert 59243	27	Richland	Democrat
Towe, Thomas E.	2640 Burlington, Billings 59102	34	Yellowstone	Democrat
*Turnage, Jean A.	P. O. Box 450, Polson 59860	13	Lake	Republican
Warden, Margaret S.	208 3rd Ave. N., Great Falls 59401	18	Cascade	Democrat
*Watt, Robert D.	451 Kensington Ave., Missoula 59801	49	Missoula	Democrat

*Term Expires Jan., 1977.
All Other Terms Expire Jan., 1979.

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HOUSE OF REPRESENTATIVES

Pat McKittrick, Speaker of the House
Francis Bardanouve, Speaker Pro Tempore

67 Democrats
33 Republicans

100 Representatives

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
Aageson, David	Gilford 59525	9	Hill	Republican
Anderson, C. R.	333½ E. Normal St., Dillon 59725	82	Beaverhead	Republican
Anderson, John H., Jr.	P. O. Box 101, Alder 59710	81	Madison	Republican
Asher, Wm. E. "Bill"	P. O. Box 467, Manhattan 59741	79	Gallatin	Republican
Babcock, Betty L.	720 Madison, Helena 59601	30	Lewis & Clark	Republican
Baeth, Russell	P. O. Box 184, Martin City 59926	15	Flathead	Democrat
Baeth, William R. (Bill)	805 Minnesota Ave., Libby 59923	21	Lincoln	Democrat
Bardanouve, Francis	Harlem 59526	6	Blaine	Democrat
Barrett, Fred O.	259 Maple, Lewistown 59457	48	Fergus	Republican
Bengtson, Esther G.	Shepherd 59079	59	Yellowstone	Democrat
Bertelsen, Verner L.	Box 65, Ovando 59854	27	Powell	Republican
Bradley, Dorothy	P. O. Box 931, Bozeman 59715	77	Gallatin	Democrat
Brand, Joe	800 Montana Ave., Deer Lodge 59722	28	Powell	Democrat
Casey, Dennis D.	420 Johnson St., Wolf Point 59201	3	Roosevelt	Republican
Conroy, Thomas R.	607 W. 3rd St., Hardin 59034	58	Big Horn	Democrat
Dassinger, E. N.	Box 753, Forsyth 59327	50	Rosebud	Democrat
Day, William M. (Willie)	Bloomfield Rt., Glendive 59330	54	Dawson	Democrat
Driscoll, John Brian	424 S. Second, Hamilton 59840	91	Ravalli	Democrat
Dussault, Ann Mary	Rt. 2, Mullan Rd., Missoula 59801	95	Missoula	Democrat
Ellerd, Robert A.	2206 Bridger Dr., Bozeman 59715	75	Gallatin	Republican
Ellis, Howard L.	Rt. 4, Missoula 59801	93	Missoula	Republican
Ellison, Orval S.	West Boulder Rt., McLeod 59052	73	Park	Republican
Fabrega, W. Jay	2207 Beech Dr., Great Falls 59401	44	Cascade	Republican
Fagg, Harrison G.	1414 Mystic Dr., Billings 59102	63	Yellowstone	Republican
Federico, Roberto M.	313 S. 32nd, Billings 59101	61	Yellowstone	Democrat
Finley, Bob	221 Springcreek Dr., Kalispell 59901	19	Flathead	Democrat
Fishbaugh, Fred	Carter 59420	10	Chouteau	Democrat
Fleming, James F., Jr.	Box 116, Pablo 59855	25	Lake	Democrat
Gerke, Harold E.	202 Mtn. View, Billings 59101	62	Yellowstone	Democrat
Gilligan, Peter J., Jr.	3330 13th Ave. S., Great Falls 59405	38	Cascade	Democrat
Gould, R. Budd	2121 35th Ave., Missoula 59801	98	Missoula	Republican
Gunderson, Jack	Power 59468	35	Cascade	Democrat
Guthrie A. B.	311 Yellowstone Ave., Billings 59102	66	Yellowstone	Republican
Gwynn, William G.	Box 645, Eureka 59917	20	Lincoln	Democrat
Hageman, Alvin	Stillwater Co. RR, Broadview 59015	72	Stillwater	Democrat
Hager, Tom	1540 Elaine St., Billings 59101	60	Yellowstone	Republican
Halvorson, Ora J.	244 Woodland Ave., Kalispell 59901	16	Flathead	Democrat
Harper, Robert J. "Bob"	68 Missoula Ave., Butte 59701	88	Silver Bow	Democrat
Helmbrecht, Steven N.	Box 630, Havre 59501	8	Hill	Democrat
Herlevi, Martha S.	Box 974, Red Lodge 59068	71	Carbon	Democrat
Holmes, Polly	1620 Ave. F., Billings 59102	67	Yellowstone	Democrat
Hubing, Lee	Terry 59349	52	Prairie	Republican
Huennekens, Herb	3216 Rimrock Rd., Billings 59102	68	Yellowstone	Democrat
Jacobsen, Glenn E.	Reserve 59258	1	Sheridan	Democrat
Johnson, Duane	224 Pattee Creek, Dr., Missoula 59801	97	Missoula	Democrat
Johnson, George R.	504 Third St., S.E., Cut Bank 59427	13	Glacier	Democrat
Kanduch, Joe F., Sr.	Barker Creek, Anaconda 59711	89	Deer Lodge	Democrat
Kelly, Robert F.	1737 Florence, Butte 59701	86	Silver Bow	Democrat
Kemmis, Daniel	3618 S. Third West, Missoula 59801	100	Missoula	Democrat
Kendall, Orin P.	Box 563, Thompson Falls 59873	23	Sanders	Democrat
Kimble, Gary Niles	640 S. Sixth E., Missoula 59801	94	Missoula	Democrat
Kropp, Paul K.	Box 520, Malta 59538	5	Phillips	Republican
Kummerfeldt, Ernest L.	Nashua 59248	4	Valley	Democrat
Kvaalen, Oscar S.	Lambert 59243	53	Richland	Republican
Lester, Dennis A.	1412 Fourth Ave. S., Great Falls 59405	37	Cascade	Democrat
Lien, Edward	SR 231, Box A33, Wolf Point 59201	49	McCone	Democrat
Lockrem, Lloyd C., Jr.	3109 Edmond St., Billings 59102	64	Yellowstone	Republican
Lory, Earl C.	Rt. 5, Miller Crk. Rd., Missoula 59801	99	Missoula	Republican
Luebeck, Al	2710 Amherst Ave., Butte 59701	83	Silver Bow	Democrat
Lund, Art	Box 806, Scobey 59263	2	Daniels	Republican
Lynch, John "J.D."	527 W. Mercury, Butte 59701	87	Silver Bow	Democrat
McFadden, Duane P. "Mac"	1804 4th Ave. N., Great Falls 59401	39	Cascade	Democrat
McKittrick, Pat	636 Carol Ave., Great Falls 59405	42	Cascade	Democrat
Magone, Joseph M.	Rt. 1, Box 5, Superior 59872	24	Mineral	Democrat
Manuel, Rex	Fairfield 59436	11	Teton	Democrat
Marks, Robert L. (Bob)	Clancy 59634	80	Jefferson	Republican
Meloy, Peter M.	812 N. Ewing, Helena 59601	29	Lewis & Clark	Democrat
Menahan, William (Red)	1304 W. Fifth St., Anaconda 59711	90	Deer Lodge	Democrat
Mercer, Wallace W. "Wally"	1914 Patricia Lane, Billings 59102	65	Yellowstone	Republican
Moore, Jack K.	1200 32nd St. S. #85, Gt. Falls 59405	41	Cascade	Republican

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HOUSE OF REPRESENTATIVES

(Continued)

Moore, James	501 Sylvan, Kalispell 59901	18	Flathead ..... Democrat
Mular, James T.	3015 Busch, Butte 59701	85	Silver Bow ..... Democrat
Murphy, John	Box 40, Stanford 59479	47	Judith Basin ..... Democrat
O'Connell, Helen G.	703 4th Ave. SW, Great Falls 59404	34	Cascade ..... Democrat
Palmer, Bob	711 W. Spruce, Missoula 59801	96	Missoula ..... Democrat
Quilici, Joe	3040 Kossuth, Butte 59701	84	Silver Bow ..... Democrat
Rasmussen, A. T. "Tom"	1300 North Montana, Helena 59601	31	Lewis & Clark ... Republican
Richards, Paul T.	1002 Wilder Ave., Helena 59601	32	Lewis & Clark ... Democrat
Robbins, Hershel M.	915 1st St. E., Roundup 59072	46	Musselshell ..... Democrat
Schye, Elmer	Box 504, Wh. Sulphur Springs 59645	45	Meagher ..... Republican
Scully, John P.	P. O. Box 1172, Bozeman 59715	76	Gallatin ..... Democrat
Seifert, Carl A.	Rt. 1, Box 45B, Polson 59860	26	Lake ..... Republican
Shelden, Arthur H.	Rt. 1, Box 1650, Libby 59923	22	Lincoln ..... Democrat
Sivertsen, Robert	P. O. Box 531, Havre 59501	7	Hill ..... Republican
Sloan, James A.	421 2nd Ave. W., Kalispell 59901	17	Flathead ..... Democrat
Smith, Carl M.	Olive 59343	57	Powder River ..... Republican
South, Carroll V.	506 Mississippi Ave., Miles City 59301	51	Custer ..... Democrat
Staigmiller, John B.	P. O. Box 422, Cascade 59421	33	Cascade ..... Democrat
Stoltz, Gail M.	Valier 59486	14	Pondera ..... Democrat
Teague, Wes	4314 Fenton Ave., S.W., Billings 59101	69	Yellowstone ..... Democrat
Thomas, Bill	704 52 St. S., Great Falls 59405	40	Cascade ..... Democrat
Travis, Geraldine W.	5413 6th Ave. S., Great Falls 59405	43	Cascade ..... Democrat
Tropila, Joe	209 Second St., NW, Great Falls 59404	36	Cascade ..... Democrat
Underdal, Melvin	Box 605, Shelby 59474	12	Toole ..... Republican
Vincent, John C.	908 S. Tracy, Bozeman 59715	78	Gallatin ..... Democrat
Willimas, J. Melvin	P. O. Box 245, Laurel 59044	70	Yellowstone ..... Democrat
Wolfe, Sam	Rt. 1, Box 50, Stevensville 59870	92	Ravalli ..... Democrat
Wood, L. E. (Gene)	719 N. Meade Ave., Glendive 59330	55	Dawson ..... Republican
Wyrick, Harold A.	Route 3, Baker 59313	56	Fallon ..... Republican
Yardley, Dan	P. O. Box 482, Livingston 59047	74	Park ..... Democrat

Compiled and Published from the official files of Frank Murray, Secretary of State, Helena, Montana.

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189	88		An act amending section 92-706.1, R.C.M. 1947, of the Workmen's Compensation Act, by removing references to time limitations on medical benefits so that the Montana Medical Benefit Provision under the Workmen's Compensation Act complies fully with the report of the National Commission on State Workmen's Compensation Laws. ....Page 359
190	121		An act to amend section 94-2-101 of the Criminal Code, in the definition of intoxicating substance by changing the references to nonalcoholic substance. ....Page 360
191	138		An act to amend the Uniform Probate Code to provide that a personal representative and his attorney may not receive a fee or other compensation for an estate not closed within two years unless good cause is shown to exist. ....Page 367

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194	229		An act amending section 11-1804, R.C.M. 1947, by requiring police commissions in cities of the third class and some towns; and repealing section 11-1804.1, R.C.M. 1947. ....Page 369
195	231		An act to increase the salaries of certain county officers; amending section 25-605, R.C.M. 1947. ....Page 370
196	234		An act amending section 5-527, R.C.M. 1947, to allow savings and loan associations to make the same charges on installment loans as do banks and excluding application of the section to loans for the purchase of real estate. ....Page 371
197	248		An act to amend section 11-1914, R.C.M. 1947, to provide that trustees of fire department relief associations in third class cities may continue to invest their surplus funds if they yield within one percent of the yield on investments of public retirement funds. ....Page 372
198	296		An act declaring the sale of gasoline on any basis other than gross volume delivered to be void. ....Page 374
199	313		An act to require county clerks to record and index information regarding subdivisions; amending sections 16-2902 and 16-2905, R.C.M. 1947. ....Page 374
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202	325		An act authorizing school trustees to pay the school district's obligation for employer contribution to the unemployment compensation system from the school district's retirement fund, amending section 75-7204, R.C.M. 1947. ....Page 379
203	343		An act to provide compensation and expenses for members of the Board of Trustees of the Historical Society; amending section 82A-507, R.C.M. 1947. ....Page 380
204	344		An act to provide that the Montana Historical Society may use proceeds from sales of surplus and duplicate articles exclusively for acquisition of library, art, and museum artifacts; amending section 44-523, R.C.M. 1947. ....Page 381
205	355		An act to amend section 23-3003, R.C.M. 1947, pertaining to deputy registrars by requiring instruction in registration for notaries registering voters; and deleting the requirement of taxpaying status for deputy registrars. ....Page 382
206	359		An act to provide for the collection of fees by the Department of Social and Rehabilitation Services, and requiring deposit of such fees in the earmarked revenue fund. ....Page 383
207	363		An act providing that the office of the governor shall continuously study and evaluate the organizational structure, management practices and functions of the executive branch and report to the legislature, by repealing section 2 of Chapter 238, Laws of Montana 1973, (which made this function temporary); and providing for an immediate effective date. ....Page 384
208	398		An act requiring contractors to acquire surety bonds to insure workers' wages and fringe benefits; and providing for exceptions. ....Page 384
209		107	An act amending sections 84-401 and 84-501, R.C.M. 1947, to provide that all taxable real property and improvements must be assessed at forty percent of its full cash value and stating exceptions; and providing an effective date. ....Page 386
210		203	An act to amend sections 84-901 and 84-902, R.C.M. 1947, relating to the statement to be furnished to the State Department of Revenue by officers of certain telegraph, telephone, electric power and other lines, and by the agent of the Department of Revenue; and to amend section 84-906, R.C.M. 1947, relating to the statement of the amount apportioned to the counties. ....Page 387
211		247	An act to conform the licensing of proprietary postsecondary institutions to the Montana Administrative Procedure Act; amending section 75-9212, R.C.M. 1947; repealing sections 75-9213 and 75-9214, R.C.M. 1947; and providing an effective date. ....Page 389

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214		337	An act to amend section 66-2104, R.C.M. 1947, to provide that the board of abstracters shall increase the compensation of the board, and to provide actual expenses and mileage as authorized by section 59-801, R.C.M. 1947....Page 429
215		378	An act to amend sections 66-1228, 66-1234, 66-1236, 66-2108, 66-2110, 66-2111, 66-2337, 66-2340, 66-2344, 66-2405, 66-2707, 66-2709, 66-2711, 66-3016, R.C.M. 1947, to provide increased fees for application, examination, renewal, late renewal or registration for applicants, licensees or registrants of the boards of nursing, abstracters, professional engineers, and land surveyors, plumbers, morticians, and hearing aid dispensers of the Department of Professional and Occupational Licensing; to provide that fees may be increased or decreased by the various boards within limits; and providing an effective date....Page 429
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448	333		An act to provide for fiscal review of state government; creating a Legislative Finance Committee and specifying its powers and duties; creating the office of Legislative Fiscal Analyst and specifying duties; repealing sections 43-1101 through 43-1108, R.C.M. 1947; and providing an effective date. ....Page 1122
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453		327	An act to establish a program providing lifesaving treatment for chronic renal disease, requiring standards for determining eligibility to be established and appropriating two hundred thousand dollars ($200,000) from the general fund for the biennium ending June 30, 1977, to the Department of Social and Rehabilitation Services for such purpose. ....Page 1131
454		334	An act to eliminate the budget limitation of 112% for school districts; amending section 75-6923, R.C.M. 1947; and providing an immediate effective date. ....Page 1131
455		370	An act generally revising the water pollution control laws to conform with federal requirements, to improve enforcement procedures, and to provide for user charges for industrial and other users of public sewage treatment systems; amending sections 16-4412, 16-4526, 69-4801, 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1, 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825, and 69-4826, R.C.M. 1947. ....Page 1133
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460		643	An act to provide for a program planning and budgeting system; to specify information to be contained in the proposed budget; providing for the submission of various reports....Page 1151
461		342	An act to be known as the Housing Act of 1975; creating a Board of Housing and providing for its powers and duties relating to financing to assist private enterprise and governmental agencies to meet housing needs....Page 1153
462		591	An act to establish a Bicentennial Statewide Project Selection Commission to select a site for a single, permanent statewide project to commemorate the bicentennial anniversary of the American Revolution; appropriating matching funds for such statewide project; and providing an immediate effective date....Page 1168
463	310		An act to provide for a policy of preserving the natural or existing shape, form and course of streams to activities of private persons or organizations; and in so doing to keep soil erosion and sedimentation to a minimum in the state of Montana; and to provide for penalties and enforcement....Page 1169
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SESSION LAWS

ENACTED BY THE

Forty-fourth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1975

EXPLANATORY NOTE:

Portions of statutes included herein are printed in ITALICS by virtue of Section 43-711.3, R.C.M., 1947. They are thus printed to make instantly recognizable the new part of existing statutes as added or changed by the Forty-fourth Legislature.

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SESSION LAWS

CHAPTER NO. 1

AN ACT CHANGING THE LAWS RELATING TO HOMESTEADS IN ORDER TO REMOVE SEXUAL DISCRIMINATION FROM SUCH LAWS; AMENDING SECTIONS 33-102, 33-121, 33-125, 33-126, AND 33-127, R.C.M. 1947; AND REPEALING SECTION 33-103, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-102, R.C.M. 1947, is amended to read as follows:

"**33-102. From what it may be selected.** If the claimant be married, the homestead may be selected from the property of *either spouse.* When the claimant is not married, but is head of a family, within the meaning of section 33-125, the homestead may be selected from any of his or her property."

Section 2. Section 33-121, R.C.M. 1947, is amended to read as follows:

"**33-121. After sale, money equal to homestead exemption protected.** The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of *either spouse,* which the law gives to the homestead."

Section 3. Section 33-125, R.C.M. 1947, is amended to read as follows:

"**33-125. "Head of family" defined.** The phrase "head of a family" as used in this chapter, includes within its meaning:

1. *The husband and wife acting together or either one of them if they do not join in the particular transaction. In any given transaction which requires action by the "head of a family" the spouse who undertakes the transaction shall be deemed "head of the family" in regard to that particular transaction.*

2. Every person who has attained the age of sixty years and who actually resides on the premises.

3. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either:

First. His or her minor child, or the minor child of his or her wife or husband, or former wife or husband;

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Second. A minor grandchild, brother or sister, or minor child of a brother or sister;

Third. A father, mother, grandfather, or grandmother;

Fourth. The father, mother, grandfather, or grandmother, of a husband or wife; or former husband or wife;

Fifth. An unmarried sister, *brother* or any other of the relatives mentioned in this section, who have attained the age of majority and are unable to take care of or support themselves."

Section 4. Section 33-126, R.C.M. 1947, is amended to read as follows:

"**33-126. Mode of selection.** In order to select a homestead, the head of a family must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record."

Section 5. Section 33-127, R.C.M. 1947, is amended to read as follows:

"**33-127. Declaration of homestead—must contain what.** The declaration of homestead must contain:

1. A statement, showing that the person making it is the head of a family. *If both spouses join in the declaration, this fact shall be stated;*

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

3. A description of the premises;

4. An estimate of their actual cash value."

Section 6. Section 33-103, R.C.M. 1947, is repealed.

Approved January 31, 1975.

CHAPTER NO. 2

AN ACT AMENDING SECTIONS 94-5-503 AND 94-5-603, R.C.M. 1947, TO REMOVE CERTAIN SEXUAL DISTINCTIONS IN THE CRIMINAL LAW; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"**94-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with a *person* not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be

imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission."

Section 2. Section 94-5-603, R.C.M. 1947, is amended to read as follows:

"**94-5-603. Promoting prostitution.** (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business; or

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate; or

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute; or

(d) solicits a person to patronize a prostitute; or

(e) procures a prostitute for a patron; or

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution, or procures or pays for transportation with that purpose; or

(g) leases or otherwise permits a place controlled by the offender alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution, or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part, upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self support.

(2) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) Compels another to engage in or promote prostitution.

(b) Promotes prostitution of a child under the age of eighteen (18) years, whether or not he is aware of the child's age.

(c) Promotes the prostitution of *one's spouse*, child, ward or any person for whose care, protection or support he is responsible.

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(3) A person convicted of promoting prostitution shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(4) Evidence.

On the issue whether a place is a house of prostitution the following, in addition to all other admissible evidence, shall be admissible:

(a) Its general repute; the repute of the persons who reside in or frequent the place; or the frequency, timing and duration of visits by nonresidents.

(b) Testimony of a person against his spouse shall be admissible under this section."

Section 3. This act shall be effective upon passage and approval.

Approved February 6, 1975.

CHAPTER NO. 3

AN ACT TO AMEND SECTION 87-104 TO WAIVE THE FOUR AND ONE-HALF PERCENT (4 ½%) NATIONAL "ON" AND "OFF" TRIGGER FOR EXTENDED BENEFITS AND SUBSTITUTING FOUR PERCENT (4%) FOR THE PERIOD JANUARY 1, 1975 THROUGH DECEMBER 31, 1976 AND TO WAIVE THE ONE HUNDRED AND TWENTY PERCENT (120%) FACTOR OF THE STATE "ON" AND "OFF" TRIGGER DURING THE SAME PERIOD TO AVAIL THE STATE OF THE ONE HUNDRED PERCENT (100%) REIMBURSEMENT FACTOR OF FEDERAL LAW; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-104, R.C.M. 1947, is amended to read as follows:

"87-104. Duration of benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall be:

(a) (1) Thirteen (13) times his weekly benefit amount if he is qualified as an insured worker as defined in section 87-103 (c), and does not qualify under subsection (2) or (3) below.

(2) Twenty (20) times his weekly benefit amount if in addition to meeting the requirements of section 87-103 (c), he has been paid wages of one hundred dollars ($100) or more for insured work in each of two (2) quarters in his base period other than the quarter in which his wages were highest.

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(3) Twenty-six (26) times his weekly benefit amount if in addition to meeting the requirement of section 87-103 (c), he has been paid wages of one hundred dollars ($100) or more for insured work in each of three (3) quarters in his base period other than the quarter in which his wages were highest.

(4) Extended benefits if he is qualified as provided under the provisions of this subsection.

(a) Definitions. As used in this section, unless the context clearly requires otherwise—

(1) "Extended benefit period" means a period which

(A) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a state "on" indicator; and

(B) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or

(ii) the thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) There is a "national 'on' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half per cent (4 ½%).

(3) There is a "national 'off' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half per cent (4 ½%).

(4) There is a "state 'on' indicator" for this state for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) equaled or exceeded one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four per cent (4%).

(5) There is a "state 'off' indicator" for this state for a week if the commission determines, in accordance with the regulations of the U. S.

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Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) was less than one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, or

(B) was less than four per cent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing

(i) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive-week period, as determined by the commission on the basis of his reports to the U. S. Secretary of Labor, by

(ii) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

(B) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

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(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U. S. Secretary of Labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the U. S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. —Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commission, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits. —An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the commission finds that with respect to such week:

(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly extended benefit amount. —The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total extended benefit amount. —The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) fifty per cent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year.

(f) (1) Beginning and termination of extended benefit period. —Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the commission shall make an appropriate public announcement.

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(2) Computations required by the provisions of subsection (a)(6) shall be made by the commission, in accordance with regulations prescribed by the U. S. Secretary of Labor.

(3) The effective date of subsection (a)(4) of this section shall be January 1, 1972.

(b) An individual disqualified by and pursuant to section 87-106, subsections (a), (b) and (c), shall have his maximum weekly duration reduced by the number of weeks equal to the number of weeks of disqualification.

(c) Effective with respect to compensation for weeks of unemployment beginning before December 31, 1976, and beginning after December 31, 1974, the determination of whether there has been a state "on" or "off" indicator beginning or ending an extended benefit period shall be made under this subsection as if paragraph (a) did not contain subparagraph (4)(a)(4)(A) and (4)(a)(5)(A) thereof.

(d) Effective with respect to compensation for weeks of unemployment beginning before December 31, 1976, and beginning after December 31, 1974, the determination of whether there has been a national "on" or "off" indicator beginning or ending any extended benefit period shall be made under subsection (a) as if the phrase "4.5 per centum", contained in paragraphs (4)(a)(2) and (4)(a)(3) read "4 percent (4%)"."

Section 2. This act is effective on its passage and approval.

Approved February 6, 1975.

CHAPTER NO. 4

AN ACT PROVIDING THAT CITATION OF "R.C.M. 1947" IS NOT NECESSARY IN ORDER TO REFER TO THE REVISED CODES OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reference to other titles, chapters or sections within codes.** A title, chapter or statute which refers to a section number without further identification or attribution shall be presumed, unless the context clearly indicates otherwise, to refer to a title, chapter or section of the Revised Codes of Montana, 1947.

Approved February 11, 1975.

CHAPTER NO. 5

AN ACT TO AMEND SECTION 43-310, R.C.M. 1947, TO DELETE THE REQUIREMENT THAT LEGISLATORS BE PAID WEEKLY; AND PROVIDING AN EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-310, R.C.M. 1947, is amended to read as follows:

"**43-310. Per diem, mileage and expenses of members.** (1) Legislators are entitled to compensation of twenty dollars ($20) per legislative day during a session of the legislature, and twelve cents (12¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the shortest regularly traveled automobile route.

(2) Members are also entitled to thirty-three dollars ($33) per day, seven (7) days a week during a legislative session, as reimbursement for expenses incurred in attending the session. Expense payments shall stop when the legislature recesses for more than three (3) days and shall resume when the legislature reconvenes.

(3) While going to, attending, and returning from legislative standing committee meetings and necessary committee business authorized by the chairman of the legislative council during the legislative interim, legislators are entitled to

(a) a mileage allowance of twelve cents (12¢) per mile for each mile of travel,

(b) actual expenses, and

(c) compensation of twenty dollars ($20) per day.

(4) Legislators are also entitled to a mileage allowance of twelve cents (12¢) per mile for travel to and from their respective pre-session caucus meeting."

Section 2. This act shall be effective immediately upon approval and passage.

Approved February 11, 1975.

CHAPTER NO. 6

AN ACT TO CLARIFY AND PROPERLY COMPOSE SECTION 32-2144.6, R.C.M. 1947, RELATING TO VIOLATION OF THE FIFTY-FIVE (55) MILE AN HOUR SPEED LIMIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2144.6, R.C.M. 1947, is amended to read as follows:

"**32-2144.6. Enforcement.** (1) A person violating the speed limit imposed pursuant to section 32-2144.1 is guilty of the offense of unnecessary waste of a resource currently in short supply and upon conviction

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shall be fined five dollars ($5) and no jail sentence may be imposed. Bond for this offense shall be five dollars ($5).

For the purpose of this section only, the fees of the justice court shall be four dollars ($4) to be remitted as set forth in section 25-311.

(2) No violation of this act shall be recorded or charged against the driver's record of a person convicted of violating this act and no insurance company shall hold a violation of this act against the insured and there shall be no increase in premiums due to a violation of this act."

Approved February 11, 1975.

CHAPTER NO. 7

AN ACT TO AMEND SECTION 9-207, R.C.M. 1947, TO PROVIDE COMPENSATION FOR CEMETERY TRUSTEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 9-207, R.C.M. 1947, is amended to read as follows:

"**9-207. Government of district — appointment and terms of trustees.** Said cemetery district shall be governed and managed by three (3) trustees, appointed by the board of county commissioners. The trustees may be appointed from the freeholders residing within said district for terms of one (1), two (2) and three (3) years respectively, and until their successors shall be appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of three (3) years or until his successor shall be appointed and qualified. The trustees at their first meeting shall adopt bylaws for the government and management of the district. *Per diem and mileage of such cemetery trustees may be set by resolution of the board of county commissioners.*"

Approved February 11, 1975.

CHAPTER NO. 8

AN ACT TO CLARIFY SECTION 84-202, R.C.M. 1947.

WHEREAS, in 1973 several bills were introduced which proposed amending section 84-202, R.C.M. 1947. Two bills passed in 1973 and appear as chapters 266 and 361, Laws of 1973. These two chapters amended 84-202 by extending the tax exemption to unprocessed fruits and vegetables in farm storage and to freeport merchandise. Another bill amending section 84-202 was introduced in 1973 and held over until the 1974 session. This bill did not contain the 1973 amendments to section 84-202 and such amendments were never added to the bill. The bill was

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passed and signed into law in its introduced form and appears as chapter 376, Laws of 1974. Therefore, to ascertain the present status of section 84-202, R.C.M. 1947, it is necessary to read the 1973 and 1974 session laws in conjunction with one another. The R.C.M. pocket supplements do not presently correctly reflect the status of section 84-202. Therefore, the purpose of this act is merely to clarify the law, and does not amend it in substance.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(2) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(3) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned

to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(4) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation."

Approved February 17, 1975.

CHAPTER NO. 9

AN ACT AMENDING SECTION 92-715, R.C.M. 1947, TO PROVIDE FOR DIRECT NOTICE OF AWARD TO CLAIMANTS IN WORKMEN'S COMPENSATION CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-715, R.C.M. 1947, is amended to read as follows:

"**92-715. Biweekly payments converted into a lump sum.** The biweekly payments provided for in this act may be converted, in whole or in part, into a lump-sum payment, which lump-sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of two per centum (2%) per annum. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the *division*, both as to the amount of such lump-sum payment and the advisability of such conversion. The *division* is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act *are* void without the approval of the *division*. Any approval of the *division* must be in writing and set forth specifically the reasons for such lump-sum or compromise payment. *The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim.*"

Approved February 17, 1975.

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CHAPTER NO. 10

AN ACT TO AMEND SECTION 1-821, R.C.M. 1947, TO PROVIDE COMPENSATION FOR THE JOINT AIRPORT COMMISSION BOARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-821, R.C.M. 1947, is amended to read as follows:

"**1-821. Joint operations.** (a) Authorization. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality, as defined in this act, any agency of the state government and of the United States, and any municipality, political subdivision and agency of another state; and the term "governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality. All powers, privileges and authority granted to any municipality by this act may be exercised and enjoyed jointly with any public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the state government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a municipality.

(b) Agreement. Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each, and such other terms as are required by the provisions of this section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in this act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(c) Joint board. Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. *Per diem and*

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mileage of such joint board may be set by resolution of the board of county commissioners. The number to be appointed *and their term* shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard, subject to the limitations of subsection (d) of this section.

(d) Limitations of joint board.

(1) Expenditures. The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies.

(2) Acquisitions beyond sums allotted. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(3) Eminent domain. Eminent domain proceedings under this section may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(4) Disposal of real property. The joint board shall not dispose of any airport, air navigation facility or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into the contract, lease or other arrangements contemplated by section 1-812.

(5) Police regulations. Any resolutions, rules, regulations or orders of the joint board dealing with subjects authorized by section 1-815 shall become effective only upon approval of the governing bodies of the constituent public agencies provided that upon such approval, the resolutions, rules, regulations or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinance, resolutions, rules, regulations or orders of each public agency would have in its own territory or jurisdiction.

(e) Joint fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state or other contributions or loans, and the revenues obtained from the

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joint ownership, control and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in subsection (d) of this section."

Approved February 17, 1975.

CHAPTER NO. 11

AN ACT AMENDING SECTION 92-715, R.C.M. 1947, TO REMOVE THE TWO PERCENT (2%) DISCOUNT ON LUMP-SUM SETTLEMENTS IN WORKMEN'S COMPENSATION CASES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-715, R.C.M. 1947, is amended to read as follows:

"**92-715. Biweekly payments converted into a lump sum.** The biweekly payments provided for in this act may be converted, in whole or in part, into a lump-sum payment. Such conversion can only be made upon the written application of the injured workman, his beneficiary, or major or minor dependents, as the case may be, and shall rest in the discretion of the *division*, both as to the amount of such lump-sum payment and the advisability of such conversion. The *division* is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act; and all settlements and compromises of compensation provided in this act shall be absolutely null and void without the approval of the *division*. Any approval of the *division* must be in writing and set forth specifically the reasons for such lump-sum or compromise payment."

Section 2. This act is effective on its passage and approval.

Approved February 17, 1975.

CHAPTER NO. 12

AN ACT TO EXTEND THE AUTHORITY OF THE LEGAL SERVICES DIVISION OF THE LEGISLATIVE COUNCIL TO ASSIGN CODE SECTION NUMBERS AND CATCHLINES; AMENDING SECTION 2, CHAPTER 30, LAWS OF 1974; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 1974 legislature gave the legislative services division of the legislative council authority for one year to assign code section

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numbers and catchlines to bills and it is the intent of the legislature to make this authority permanent unless subsequently amended or repealed by the legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, chapter 30, Laws of 1974 is amended to read as follows:

"Section 2. This act is effective on its passage and approval."

Section 2. This act is effective on its passage and approval.

Approved February 21, 1975.

CHAPTER NO. 13

AN ACT TO AMEND SECTION 11-2707, R.C.M. 1947, TO PROVIDE THAT AN ORDINANCE CREATING A BOARD OF ADJUSTMENT MAY RESERVE CERTAIN DECISIONS TO THE CITY OR TOWN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2707, R.C.M. 1947, is amended to read as follows:

"**11-2707. Board of adjustment.** Such city or town council or other legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council, or other legislative body, reserves to itself the power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this chapter.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of three (3) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(2) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman,

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may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the adminstrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney.

(5) The board of adjustment shall have the following powers:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

(6) In exercising the above-mentioned powers such board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(7) The concurring vote of four (4) members of the board shall be

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necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(9) Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from."

Approved February 21, 1975.

CHAPTER NO. 14

AN ACT RELATING TO THE DESCRIPTION OF CONGRESSIONAL AND LEGISLATIVE DISTRICTS EXISTING PRIOR TO THE PLAN SUBMITTED BY THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION, AND TO REPEAL SECTIONS 43-106.6 THROUGH 43-106.9, AND 43-107, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Sections 43-106.6 through 43-106.9 and 43-107, R.C.M. 1947, are repealed.

Approved February 21, 1975.

CHAPTER NO. 15

AN ACT RAISING FROM EIGHTEEN (18) TO TWENTY-ONE (21) THE MAXIMUM AGE OF JUVENILES SUBJECT TO THE JURISDICTION OF THE DEPARTMENT OF INSTITUTIONS WHEN RELEASED TO THE AFTERCARE PROGRAM FROM A STATE JUVENILE CORRECTIONAL CENTER; AMENDING SECTION 80-1415, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1415, R.C.M. 1947, is amended to read as follows:

"**80-1415. Control over minor so released vested in department.** The department has control over a child released under section 80-1414 until he attains the age of *twenty-one (21)* years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by the child while under the control of the department."

Section 2. This act is effective on passage and approval.

Approved February 21, 1975.

CHAPTER NO. 16

AN ACT TO AMEND SECTION 68-1602, R.C.M. 1947, TO PROVIDE THAT THOSE PERSONS EMPLOYED BY THE LEGISLATURE DURING THE LEGISLATIVE SESSION MAY ELECT WHETHER OR NOT TO BECOME MEMBERS OF THE PUBLIC EMPLOYEES RETIREMENT SYSTEM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1602, R.C.M. 1947, is amended to read as follows:

"**68-1602. Exclusions.** The following persons shall not become members of the retirement system:

(1) elective officers who have not filed with the board of administra-

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tion written requests to become members; provided that any person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office; and provided further that if he shall affirmatively exercise the option, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors unless written contract specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members; provided, any person so excluded from membership by his own election may become a member by meeting the requirements of the balance of this subsection. Such a person must file an election to become a member with the board of administration no later than July 1, 1975; provided, that any such person who is not an employee on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming an employee. In either event, such person must thereupon pay to the retirement system the amount which he and his employer would have contributed had he not been so excluded plus interest which would have accumulated thereon. All benefits payable thereafter to such person shall be the same as if such person had never filed an election not to be a member;

(7) persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, and no person shall receive such credit under any circumstances; any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of making normal contributions as permanently separated from service; the accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-2301; employer contributions on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the employer; for the purpose of this section, persons receiving

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pensions, retirement allowances or other payments, from any source, on account of employment other than as an employee as defined in this act, shall not be considered, because of such receipt, members of any other retirement or pension system; provided, however, that where an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the Internal Revenue Service for its employees, such employees shall remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages shall not be deemed a part of the employee's compensation for purposes of computing the employer or employee contributions to the retirement system;

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their sixtieth birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members;

(12) Persons employed by the legislature during the legislative session, who do not file with the board of administration an election in writing to become members."

Section 2. This act is effective on passage and approval and applies to employees of the forty-fourth and subsequent legislatures.

Approved February 21, 1975.

CHAPTER NO. 17

AN ACT AMENDING SECTION 87-145, R.C.M. 1947, TO PERMIT RECOUPMENT BY OFFSET OF PAYMENTS MADE TO FRAUDULENT CLAIMANTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-145, R.C.M. 1947, is amended to read as follows:

"**87-145. Penalties — falsity or willful nondisclosure — violations by employer or agent — violation of act or regulations — wrongfully collecting benefits.** (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, or under an employment security law of any other state, or territory or the federal government either for himself or for any other person, shall:

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(1) Be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense, and

(2) Be disqualified for benefits thereafter until:

(A) He has repaid to the *division either directly or by offset of future benefits to which he may be entitled,* a sum equal to the amount so received by him; provided, however, will not be required to repay any amount so obtained more than five (5) years prior to the date of the *division's* determination that the claimant made such false statements, willful nondisclosure or misrepresentation, as provided in this paragraph, and

(B) A period of not less than ten (10) nor more than fifty-two (52) weeks have elapsed since the date of such determination by the *division,* the length of time of the disqualification as herein described to be determined by the *division* in accordance with the severity of each case.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or under the employment security law of any other state, or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provision of this act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or

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while he was disqualified from receiving benefits, shall, in the discretion of the *division*, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the *division* for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this act for the collection of past due contributions. Action for collection of overpaid benefits shall be brought within five (5) years after the date of such overpayment, otherwise to be barred as provided in section 93-2604."

Approved February 21, 1975.

CHAPTER NO. 18

AN ACT TO AMEND SECTION 59-1614, R.C.M. 1947, BY REDUCING THE FACT FINDER LIST FROM SEVEN PERSONS TO FIVE PERSONS, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1614, R.C.M. 1947, is amended to read as follows:

"**59-1614. Mediation of disputes — fact-finding proceeding — arbitration.** (1) If after a reasonable period of negotiation over the terms of an agreement, or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

(2) If upon expiration of an existing collective bargaining agreement, or thirty (30) days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate fact-finding.

(3) Within three (3) days of receipt of such petition the board shall submit to the parties a list of *five (5)* qualified, disinterested persons from which list the parties shall alternate in striking *two (2)* names, and the remaining person shall be designated fact finder. This process shall be completed within five (5) days of receipt of the list. The parties shall notify the board of the designated fact finder.

(4) If no request for fact-finding is made by either party before the expiration of the agreement, or thirty (30) days following certification or recognition of an exclusive representative, the board may initiate fact-finding as provided for in (3) above.

(5) The fact finder shall immediately establish dates and place of hearings. Upon request of either party of the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may

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administer oaths. Upon completion of the hearings, but no later than twenty (20) days from the day of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public five (5) days after it is submitted to the parties. If the dispute is not resolved fifteen (15) days after the report is submitted to the parties, the report shall be made public.

(6) The public employer and the exclusive representative shall be the only proper parties to fact-finding proceedings.

(7) The cost of fact-finding proceedings shall be equally borne by the board and the parties concerned.

(8) Nothing in this section prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

(9) Nothing in this section prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached the arbitration shall supersede the fact-finding procedures set forth in this section. An agreement to arbitrate, and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this act for enforcement of collective bargaining agreements."

Section 2. This act is effective on passage and approval.

Approved February 21, 1975.

CHAPTER NO. 19

AN ACT TO AMEND SECTION 16-807, R.C.M. 1947, AND TO ALLOW COUNTY FAIR COMMISSIONS TO CREATE CAPITAL IMPROVEMENT FUNDS AND PROVIDING FOR THEIR REGULATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-807, R.C.M. 1947, is amended to read as follows:

"**16-807. Limit of indebtedness.** No county *may* become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum of the assessed value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county *may* incur any indebtedness or liability for any single purpose to an amount exceeding forty thousand dollars ($40,000) without the approval of a majority of the electors thereof voting at an election to be provided by law*; except as provided in sections 16-1407.1 and 16-1407.2.*"

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Section 2. There is a new R.C.M. section numbered 16-1407.1 that reads as follows:

16-1407.1. Capital improvement fund authorized. The fair commission of any county in Montana is authorized to establish, by a vote of the majority of the commission, a capital improvement fund for the replacement and acquisition of property, buildings, or equipment costing more than five thousand dollars ($5,000) and which has a useful life of five (5) years or more.

Section 3. There is a new R.C.M. section numbered 16-1407.2 that reads as follows:

16-1407.2. Funding of capital improvements — restriction — interest paid to county. (1) Money for the capital improvement fund shall be derived from the unexpended money obtained by the fair commission under section 16-1406.

(2) The capital improvement fund may not exceed at any time a competent estimate of the cost of the adopted capital improvement program.

(3) All interest earned on the money in the capital improvement fund shall be paid into the county general fund.

Approved February 26, 1975.

CHAPTER NO. 20

AN ACT TO AMEND SECTION 32-1123.5, R.C.M. 1947, TO INCLUDE SELF-PROPELLED VEHICLES WITHIN THE LENGTH LIMITATIONS AND TO INCREASE THE PERMISSIBLE LENGTH TO FORTY FEET.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1123.5, R.C.M. 1947, is amended to read as follows:

"**32-1123.5. Length.** (1) A single truck *or any self-propelled vehicle,* unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of *forty (40)* feet.

(2) A single bus, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(3) A combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a trailer by use of a dolly equipped with a fifth wheel, may not have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet. If the combination consists of more than two (2) units, the rear units of the combination shall be equipped with breakaway brakes.

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(4) A motor vehicle may not tow more than one (1) motor vehicle, and a motor vehicle may not draw more than two (2) motor vehicles attached to it by the dual saddle-mount method, that is by mounting the front wheels of one (1) vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) A passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" may not tow more than one (1) trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of sixty (60) feet."

Approved February 26, 1975.

CHAPTER NO. 21

AN ACT AMENDING SECTION 32-21-112.1, R.C.M. 1947, TO ALLOW PASSENGERS TO RIDE IN SEMITRAILER TYPE HOUSE TRAILERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-21-112.1, R.C.M. 1947, is amended to read as follows:

"**32-21-112.1. Riding in house trailers.** No person or persons *may* occupy a house trailer while it is being moved upon a public highway *unless the trailer is of a semitrailer design where some part of its own weight and that of its cargo rests upon, or is carried by, its towing unit through the use of a fifth-wheel type trailer hitch, mounted on no less than a one-half (½) ton rated truck.*"

Approved February 26, 1975.

CHAPTER NO. 22

AN ACT TO AMEND SECTION 32-4720, R.C.M. 1947, CHANGING THE SIZE OF THE IDENTIFICATION TAG FROM NOT LARGER THAN SIX SQUARE INCHES TO NOT LARGER THAN THIRTY-SIX SQUARE INCHES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-4720, R.C.M. 1947, is amended to read as follows:

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"**32-4720. Permits required — identification tags — pre-existing structures.** (1) A sign authorized by subsections (i), (iv), and (v) of subsection (a) of section 32-4717 may not be constructed or maintained without a permit. Applications for permits shall be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on the land. A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars ($6).

(2) Permits shall be issued for three (3) years, assigned a permit number, and renewed every three (3) years thereafter upon payment of three dollars ($3) without the filing of a new application. All fees received shall be paid into the state highway account in the earmarked revenue fund.

(3) The department shall issue with each new permit a permanent identification tag not larger than *thirty-six (36)* square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags, upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits shall thereafter be renewed for a period of time as is prescribed in this section, unless the structure is removed for improper maintenance."

Approved February 26, 1975.

CHAPTER NO. 23

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE WORKMEN'S COMPENSATION ACT; AMENDING SECTIONS 82A-1004, 92-101, 92-111, 92-117, 92-118, 92-119, 92-120, 92-206, 92-426, 92-429, 92-432, 92-502, 92-506, 92-507, 92-508, 92-607, 92-608, 92-609, 92-614, 92-707, 92-715, 92-804, 92-806, 92-808, 92-809, 92-812, 92-813, 92-814, 92-814.1, 92-815, 92-816, 92-817, 92-818, 92-819, 92-820, 92-821, 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-826, 92-827, 92-828, 92-829, 92-830, 92-831, 92-832, 92-834, 92-835, 92-836, 92-842, 92-903, 92-904, 92-905, 92-906, 92-907, 92-908, 92-1002, 92-1004, 92-1005, 92-1006, 92-1007, 92-1008, 92-1009, 92-1010, 92-1101, 92-1102, 92-1103, 92-1104, 92-1105, 92-1105.1, 92-1108, 92-1110, 92-1112, 92-1113, 92-1114, 92-1115, 92-1117, 92-1118, 92-1119, 92-1120, 92-1122, 92-1123, 92-1401, 92-1402, 92-1406, R.C.M. 1947, AND REPEALING SECTIONS 92-104, 92-105, 92-108 THROUGH 92-110, 92-112 THROUGH 92-115, 92-414, 92-415, 92-419, 92-420, 92-427, 92-428, 92-430, 92-431, 92-611, 92-612, 92-841, 92-843, 92-1404, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-111, R.C.M. 1947, is amended to read as follows:

"92-111. **Office and furnishings — quarters.** The *division* shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties."

Section 2. Section 92-117, R.C.M. 1947, is amended to read as follows:

"92-117. **Blank forms, minutes and records.** The *division* shall cause to be printed such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act. It shall provide a book in which shall be entered the minutes of all its proceedings, a book of record in which shall be recorded all awards made by the *division,* and such other books or records as it shall deem requisite for the purpose and efficient administration of this act. All such records are to be kept in the office of the *division.*"

Section 3. Section 92-118, R.C.M. 1947, is amended to read as follows:

"92-118. **Reports and bulletins which may be published.** The *division* shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its report required by section 2 [82-4002] of this act, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable."

Section 4. Section 92-119, R.C.M. 1947, is amended to read as follows:

"92-119. **Fees of division.** The *division* shall have power and authority to charge and collect the following fees:

(1) For copies of papers and records not required to be certified or otherwise authenticated by the *division*, fifteen cents (15¢) for each folio; for certified copies of official documents and orders filed in its office, or of the evidence taken at any hearing, twenty cents (20¢) for each folio.

(2) To fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state, to the credit of the earmarked revenue fund, and shall be accompanied by detailed statement thereof."

Section 5. Section 92-120, R.C.M. 1947, is amended to read as follows:

"92-120. **Attorney general legal adviser of division.** *(1)* The attorney general shall be the legal adviser of the *division*, and shall represent it in all proceedings whenever so requested by the *division* or any member thereof.

(2) The division may, in the investigation and defense of cases under plan three of the *Workers'* Compensation Act, employ such other attorney or legal adviser, as it deems necessary, and pay for the same out of the industrial insurance account in the agency fund."

Section 6. Section 92-206, R.C.M. 1947, is amended to read as follows:

"92-206. **Compensation plan No. 3 exclusive, etc., when a public corporation is the employer.** Where a public corporation is the

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employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. Whenever a contractor is engaged as an employer in the performance of contract work for a public corporation, such employer must elect to be bound by the terms, conditions and provisions of either compensation plan No. 2 or compensation plan No. 3, and the terms, conditions and provisions of the plan chosen shall be compulsory and obligatory upon both employer and employee. Whenever any public corporation neglects or refuses to file with the *division* monthly payroll report of its employees, the *division may* levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments."

Section 7. Section 92-426, R.C.M. 1947, is amended to read as follows:

"**92-426. Division defined.** *"Division"* means the *division* of *workers' compensation of the department of labor and industry provided for in section 82A-1004, R.C.M. 1947."*

Section 8. Section 92-429, R.C.M. 1947, is amended to read as follows:

"**92-429. Order defined.** "Order" *means* any decision, rule, regulation, direction, requirement, or standard of the *division*, or any other determination arrived at or decision made by *the division*."

Section 9. Section 92-432, R.C.M. 1947, is amended to read as follows:

"**92-432. Payroll defined — estimate to establish payroll.** "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve times the average monthly payroll for the current year; provided, that an estimate may be made by the *division* for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the *division*, as the case may actually be on December 31st of such current year."

Section 10. Section 92-502, R.C.M. 1947, is amended to read as follows:

"**92-502. When compensation to beneficiaries or widow ceases.** If any beneficiaries of a deceased employee die, or if the widow or widower remarry, the right of such beneficiary or widow or widower to compensation under this act shall cease."

Section 11. Section 92-506, R.C.M. 1947, is amended to read as follows:

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"92-506. **No compensation to nonresident beneficiaries until when.** Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this act shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the *division.* And such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof."

Section 12. Section 92-507, R.C.M. 1947, is amended to read as follows:

"92-507. **Payment to nonresident beneficiaries made to whom.** Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, or consul, or consular agent within the United States, representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary, or consul, or consular agent shall acquit the employer, the insurer, or the *division*, as the case may be."

Section 13. Section 92-508, R.C.M. 1947, is amended to read as follows:

"92-508. **Compensation paid to parent or guardian.** Where payment is due to a child under eighteen *(18)* years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer or *division,* as the case may be, of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative."

Section 14. Section 92-607, R.C.M. 1947, is amended to read as follows:

"92-607. **Work to be paid for in property other than money — wages.** Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the *division* in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed. *However,* where an employer procures any work to be done by any contractor, or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent, and the value of which property is speculative or intangible, then and in that event, the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be."

Section 15. Section 92-608, R.C.M. 1947, is amended to read as follows:

"92-608. **Compensation in case of death of employee — determi-**

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nation of beneficiary, etc. *(1)* If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, shall receive the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit shall be paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

(3) The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not."

Section 16. Section 92-609, R.C.M. 1947, is amended to read as follows:

"92-609. Examination of employee by physician — request or order for — physician may testify. *(1)* Whenever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the *division*, or any member or examiner, or referee thereof.

(2) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination, or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the *division*, who shall make or be present at any such examination, may be required to testify as to the results thereof."

Section 17. Section 92-614, R.C.M. 1947, is amended to read as follows:

"92-614. Who liable for injuries under the different plans of act and in what amounts, extraterritorial application and reciprocity. *(1)* Every employer who shall become bound by and subject to the provisions of compensation plan number one (1), and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two (2), and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any.

(2) If a *worker* employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and

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receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such *worker* as though he were injured within this state.

(3) If a *worker* from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them:

(a) if the employer and employee are bound by the provisions of the *Workers'* Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the *Workers'* Compensation Act of this state is recognized and given effect as the exclusive remedy for *workers* employed in this state who are injured while temporarily employed in such other state.

(4) A certificate from an authorized officer of the *workers'* compensation department or similar agency of another state certifying that an employer of such other state is bound by the *Workers'* Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the *Workers'* Compensation Law of the certifying state.

(5) The *division may*, with the approval of the governor, enter into agreements with *workers'* compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the *workers'* compensation laws of the agreeing states."

Section 18. Section 92-707, R.C.M. 1947, is amended to read as follows:

"**92-707. Compensation from what date paid.** When an injured employee has a beneficiary who *is* entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, but if disability continues one (1) week, compensation shall be paid from the date of injury. *However,* separate benefits of medical and hospital services shall be furnished from *the* date of injury."

Section 19. Section 92-715, R.C.M. 1947, is amended to read as follows:

"**92-715. Biweekly payments converted into a lump sum.** The biweekly payments provided for in this act may be converted, in whole or in part, into a lump-sum payment, which lump-sum payment shall not exceed the estimated value of the present worth of the deferred payments capitalized at the rate of two *percent* (2%) per annum. Such conversion can only be made upon the written application of the injured *worker or the worker's* beneficiary and shall rest in the discretion of the *division,* both as to the amount of such lump-sum payment and the advisability of such conversion. The *division* is hereby vested with full power, authority, and jurisdiction to compromise claims and to approve compromises of claims under this act. *All* settlements and compromises of compensation provided in this act *are* void without the approval of the *division.* Any approval of the *division* must be in writing and set forth specifically the reasons for such lump-sum or compromise payment."

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Section 20. Section 92-804, R.C.M. 1947, is amended to read as follows:

"**92-804. Misrepresenting payroll.** Any employer who *misrepresents* to the *division* the amount of a payroll upon which the premiums or assessments under compensation plan number three are to be levied, or upon which fees for factory inspection, subsequent inspection, or reinspection, as elsewhere provided in this act, are based, shall be liable to the state in ten *(10)* times the amount of difference between the amount paid and the amount which should have been paid. Such liability may be recovered in a civil action brought in the name of the state. All sums collected under this section shall be paid into the fund to which the original payments were, or should have been credited."

Section 21. Section 92-806, R.C.M. 1947, is amended to read as follows:

"**92-806. Duplicate receipts paid for injuries to be filed — statements of medical expenditures.** Every employer coming under the provisions of compensation plan number one, and every insurer coming under the provisions of compensation plan number two, shall, on or before the fifteenth day of each and every month, file with the *division* duplicate receipts for all payments made during the previous month to injured *workers* or their beneficiaries or dependents; and statements showing the amounts expended during the previous month for medical, surgical, and hospital services, and for the burial of injured *workers*."

Section 22. Section 92-808, R.C.M. 1947, is amended to read as follows:

"**92-808. Employers and insurers required to file reports of accidents.** Every employer of labor and every insurer is hereby required to file with the *division*, under such rules as the *division* may, from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the *division* in such form and such detail as the *division* shall from time to time prescribe, and shall make specific answers to all questions required by the *division* under its rules, except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure."

Section 23. Section 92-809, R.C.M. 1947, is amended to read as follows:

"**92-809. Confidential information used, how.** No information furnished to the *division* by an employer or an insurer shall be open to public inspection, or made public except on order of the *division*, or by the *division* or a member of the *division*, in the course of a hearing or proceeding. Any officer or employee of the *division* who, in violation of the provisions of this section, divulges any information, shall be guilty of a misdemeanor."

Section 24. Section 92-812, R.C.M. 1947, is amended to read as follows:

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"92-812. **Hearings and investigations — technical rules.** All hearings and investigations before the *division*, or any member thereof, shall be governed by this act and by rules of practice and procedure to be adopted by the *division*, and in the conduct thereof neither the *division* nor any member thereof shall be bound by the technical rules of evidence. No informality in any proceedings or in the manner of taking testimony shall invalidate any order, decision, award, rule, or regulation made, approved, or confirmed by the *division*."

Section 25. Section 92-813, R.C.M. 1947, is amended to read as follows:

"92-813. **Depositions may be taken.** The *division*, or any member thereof, or any party to the action or proceeding may, in any investigation or hearing before the *division*, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the district courts of this state, and to that end may compel the attendance of witnesses and the production of books, documents, papers, and accounts."

Section 26. Section 92-814, R.C.M. 1947, is amended to read as follows:

"92-814. **Powers of division.** The *division* is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act."

Section 27. Section 92-814.1, R.C.M. 1947, is amended to read as follows:

"92-814.1. **Requiring claimant to submit to examination — report of physician — cost.** In the event of a dispute concerning the physical condition of a claimant, or the cause or causes of his injury or disability, if any, the *division*, at the request of the claimant, employer or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or physicians within the state of Montana or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician making *the* examination shall file a written report of his findings with the *division* for its use in the determination of the controversy involved. The *division* shall pay the physician for *the* examination and shall be reimbursed by the party who requested it."

Section 28. Section 92-815, R.C.M. 1947, is amended to read as follows:

"92-815. **Powers to issue writs and process — fees for serving.** *(1)* The *division may* issue writs of summons, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in like manner and to the same extent as courts of record. The process issued by the *division* shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the *division*.

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(2) The person executing any such process shall receive such compensation as may be allowed by the *division*, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses."

Section 29. Section 92-816, R.C.M. 1947, is amended to read as follows:

"**92-816. Power to administer oaths, certify official acts, issue subpoenas — witness fees and mileage.** The *division*, its secretary and referees, *may* administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state. Each witness who shall appear by order of the *division* shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed, unless otherwise ordered by the *division*. When any witness, who has not been required to attend at the request of any party, is subpoenaed by the *division*, his fees and mileage may be paid from the funds appropriated for the use of the *division* in the same manner as other expenses of the *division* are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the *division*, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the *division* or referee, as directed in the subpoena."

Section 30. Section 92-817, R.C.M. 1947, is amended to read as follows:

"**92-817. Power of district court concerning production of testimony — contempt.** The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the *division*, shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the *division*. The *division* before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the *division* in the case or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceedings, and ask an order of *the* court compelling the witness to attend and testify or produce said papers before the *division*. The court, upon the petition of the *division* shall enter an order directing the witness to appear before the court at the time and place

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to be fixed by the court in such order, not more than ten days from the date of the order, and then and there show cause why he had not attended or testified, or produced such papers before the *division.* A copy of *the* order shall be served upon *the* witness. If it shall appear to the court that *the* subpoena was regularly issued by the *division* and regularly served, the court shall thereupon enter an order that *the* witness appear at the time and place fixed in *the* order, and testify or produce the required papers, and upon failure to obey *the* order, *the* witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the *division* to enforce the attendance of witnesses and the production of papers, and to punish for contempt, in the same manner and to the same extent as courts of record."

Section 31. Section 92-818, R.C.M. 1947, is amended to read as follows:

"**92-818. Certificates and certified copies as evidence.** Copies of official documents and orders filed or deposited according to law in the office of the *division*, certified to by a member of the *division*, or by the secretary under the official seal of the *division*, to be true copies of the original, shall be evidence in like manner as the originals. In any court proceeding, wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the *Workers'* Compensation Act of the state of Montana, is a question for determination, a certificate by a member of the *division*, or by the secretary under the official seal of the *division*, certifying that such employer or employee has or has not complied with, and is or is not operating under, and is or is not bound by the provisions of the *Workers'* Compensation Act of the state of Montana, shall be prima facie evidence thereof."

Section 32. Section 92-819, R.C.M. 1947, is amended to read as follows:

"**92-819. Apportionment of costs and disbursements — expenses.** The costs and disbursements incurred in any proceeding or hearing before the *division* may be apportioned between the parties on the same or adverse sides, in the discretion of the *division.*"

Section 33. Section 92-820, R.C.M. 1947, is amended to read as follows:

"**92-820. Books, records and payrolls to be open to inspection.** The books, records, and payrolls of the employer, pertinent to the administration of this act, shall always be open to inspection by the *division* or any duly authorized employee thereof, for the purpose of ascertaining the correctness of the payroll, the number of men employed, and such other information as may be necessary for the *division* and its management under this act. Refusal on the part of the employer to submit said books, records, and payrolls for such inspection shall subject the offending employer to a penalty of one hundred dollars *($100)* for each offense, to be collected by civil action in the name of the state, and paid into the state treasury."

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Section 34. Section 92-821, R.C.M. 1947, is amended to read as follows:

"92-821. **Jurisdiction of division to hear disputes and controversies.** All proceedings to determine disputes or controversies arising under this act shall be instituted before the *division*, and not elsewhere, and heard and determined by *the division*, except as otherwise in this act provided, and the *division* is hereby vested with full power, authority, and jurisdiction to try and finally determine all such matters, subject only to review in the manner and within the time in this act provided."

Section 35. Section 92-822, R.C.M. 1947, is amended to read as follows:

"92-822. **Presumption as to legality of rules, orders, findings, etc., of division.** All orders, rules, and regulations, findings, decisions, and awards of the *division* in conformity with law shall be in force and shall be prima facie lawful; and all such orders, rules, and regulations, findings, decisions, and awards shall be conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the *division* or upon review."

Section 36. Section 92-823, R.C.M. 1947, is amended to read as follows:

"92-823. **Time for filing — final findings and awards.** The *division* shall hold the initial hearing to determine any dispute or controversy arising under this act within ninety (90) days from the date on which such disputed claim was filed with the *division*. After a final hearing by the *division*, it shall within thirty (30) days, make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the right of the parties."

Section 37. Section 92-824, R.C.M. 1947, is amended to read as follows:

"92-824. **Power of division to award compensation and time and manner of payment.** The *division* in its award may fix and determine the total amount of compensation to be paid, and specify the manner of payment, or may fix and determine the weekly disability indemnity to be paid, and order payment thereof during the continuance of such disability. *The* payment of such award and indemnity shall be in the same manner as that of undisputed awards and indemnities coming within the particular plan provided for in this act to which *the* award and indemnity belong."

Section 38. Section 92-824.1, R.C.M. 1947, is amended to read as follows:

"92-824.1. **Increase in award for unreasonable delay or refusal to pay.** When payment of compensation has been unreasonably delayed or refused, either prior or subsequent to the issuance of an award, the full amount of the order, decision or award may be increased by ten per cent (10%) of the weekly award. The question of unreasonable delay or refusal shall be determined by the *division* and such a finding shall consti-

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tute good cause to rescind, alter or amend any order, decision or award previously made in said cause for the purpose of making the increase provided herein."

Section 39. Section 92-825, R.C.M. 1947, is amended to read as follows:

"**92-825. When a nominal disability indemnity may be awarded.** If in any proceeding it is proved that an accident has happened for which the employer would be liable to pay compensation if disability has resulted therefrom, but it is not proved that an incapacity has resulted, the *division* may, instead of dismissing the application, award a nominal disability indemnity if it appears that disability is likely to result at a future time."

Section 40. Section 92-826, R.C.M. 1947, is amended to read as follows:

"**92-826. Jurisdiction to rescind or amend any order, decision, award, etc.** The *division* shall have continuing jurisdiction over all its orders, decisions, and awards, and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Provided, that the *division* shall not have power to rescind, alter, or amend any final settlement or award of compensation more than four (4) years after the same has been made, and provided further that the *division* shall not have the power to rescind, alter or amend any order approving a full and final compromise settlement of compensation. Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award, shall have the same effect as original orders or awards."

Section 41. Section 92-827, R.C.M. 1947, is amended to read as follows:

"**92-827. Record of proceedings to be kept and testimony to be taken down — attorney's fees — transcripts on appeal — indigent claimants.** *(1)* A full and complete record shall be kept of all proceedings and hearings had before the *division* of any formal hearing had, and all testimony produced before the *division* shall be taken down by a stenographic reporter appointed by the *division,* and the parties shall be entitled to be heard in person or by attorney.

(2) Whenever the claimant or plaintiff is represented by an attorney either before the *division* or the courts, the *division* may, in its discretion or upon the application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the *division* shall be paid by claimant or plaintiff.

(3) In cases of an action to review any order or decision of the *division,* a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the *division. The division* must furnish a copy of such testimony, written exhibits, pleadings, records and proceedings to the claimant without cost.

(4) After judgment on appeal to the district court, an indigent claimant, deeming himself aggrieved, may file in *the* court an affidavit that

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he does not have money, property or credit sufficient to pay for the cost of a transcript on appeal to the supreme court, and the clerk of court serve a copy by registered mail, return receipt requested, on the *division. The* affidavit shall be prima facie evidence of the truth of the facts stated therein. *If* the *division contests* the allegations, the court shall fix a date for the hearing thereof, not less than five *(5)* nor more than ten *(10)* days from *the* date of filing, and shall make its determination of the controversy, and if it be found and adjudged that the claimant does not have sufficient money, property or credit to pay for *the* transcript, the order shall direct the *division* to furnish the same at its expense to be paid from the industrial accident administrative earmarked revenue account.

(5) All proceedings on appeal, including preparation, presentation and settlement of the bill of exceptions, shall be continued pending determination of the controversy.

(6) If the *division* does not contest the allegations of the claimant's affidavit within ten *(10)* days from receipt, it shall be deemed in default and the court shall make its order in favor of claimant on expiration of such period."

Section 42. Section 92-828, R.C.M. 1947, is amended to read as follows:

"**92-828. Collateral attack not permitted.** No orders or decisions of the *division* shall be subject to collateral attack, and may be reviewed or modified only in the manner provided therein."

Section 43. Section 92-829, R.C.M. 1947, is amended to read as follows:

"**92-829. Application for rehearing.** At any time within twenty *(20)* days after the service of any order or decision of the *division*, any party or parties aggrieved thereby may apply for a rehearing upon one or more of the following grounds, and upon no other grounds:

(1) That the *division* acted without or in excess of its powers;

(2) That the order, decision, or award was procured by fraud;

(3) That the evidence does not justify the findings;

(4) That the applicant has discovered new evidence, material to him, and which he could not, with reasonable diligence, have discovered and produced at the hearing;

(5) That the findings do not support the order, decision, or award;

(6) That the order, decision, or award is unreasonable."

Section 44. Section 92-830, R.C.M. 1947, is amended to read as follows:

"**92-830. Division may at any time diminish or increase an award.** Nothing contained in the preceding section shall, however, be construed to limit the right of the *division*, at any time after the date of its award, and from time to time after due notice and upon the application of any party interested, to review, diminish, or increase, within the limits pro-

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vided by this act, any compensation awarded upon the grounds that the disability of the person in whose favor such award was made has either increased or diminished or terminated."

Section 45. Section 92-831, R.C.M. 1947, is amended to read as follows:

"**92-831. Application for rehearing — contents — rules of procedure.** The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers *the* order, decision, award, rule, or regulation to be unjust, or unlawful, and shall in other respects conform to such rules as the *division* may prescribe. The *division may adopt* rules to govern the procedure upon rehearing, and any matter before it and any order made after such rehearing abrogating or changing the original order shall have the same force and effect as an original order, and shall not affect any right, or enforcement of any right, arising from or by virtue of the original order."

Section 46. Section 92-832, R.C.M. 1947, is amended to read as follows:

"**92-832. Application for rehearing or appeal shall not operate as stay.** An application for rehearing or the appeal hereinafter provided shall not excuse any employer, employee, or other person from complying with or obeying any order or requirement of the *division*, or operate in any manner to stay or postpone the enforcement of an order or requirement thereof, except as the *division* or the court may direct."

Section 47. Section 92-834, R.C.M. 1947, is amended to read as follows:

"**92-834. How appeal taken — notice — record — trial.** *The* appeal shall be taken by serving a copy of *a* notice *of appeal on the administrator of the division* and filing the original with the clerk of the court to which *the* appeal is taken. A copy of *the* notice must also be served upon the adversary party, if any, by mailing the *copy* to *the* adversary party to *the* address of *the* party as *the* party shall have left with the *division*. If *the* party *has* left no address with the *division*, then no service upon *the* party shall be required. The order of filing and service of *the* notice is immaterial. Immediately upon service upon *the division* of *the* notice, the *division* shall certify to *the* district court the entire record and proceedings, including all testimony and evidence taken by *the division*, with the clerk of *the* district court. Immediately upon the return of *the* certified record, the district court shall fix a day for the hearing of *the* cause, and shall cause notice to be served upon the *division* and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the *division*, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the *division* regularly pursued its authority, and whether or not the findings of the *division* ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case."

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Section 48. Section 92-835, R.C.M. 1947, is amended to read as follows:

"**92-835. Appearances — setting aside conclusions, orders, etc., of division — judgment and findings.** The *division* and each party to the action or proceeding before the *division* shall have the right to appear in the proceeding, and it shall be the duty of the *division* to so appear. If the court *finds* from *the* trial, as aforesaid, that the findings and conclusions of the *division* are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the *division*, or that any finding and conclusion, or any order, rule, or requirement of the *division* is unreasonable, the court shall set aside *the* finding, conclusion, order, judgment, decree, rule, or requirement of *the division*, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises."

Section 49. Section 92-836, R.C.M. 1947, is amended to read as follows:

"**92-836. Appeals to supreme court.** Either the *division*, or the appellant, or any adversary party, if there be one, may appeal to the supreme court of the state of Montana from any final order, judgment, or decree of the district court, which appeal shall be taken in like manner as appeals are now taken in other civil actions to the supreme court, and upon such appeal the supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of *the* district court, without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed it shall have precedence upon the calendar of the supreme court, and shall be tried anew by *the* supreme court upon the record made in *the* district court and before *the division*, and judgment and decree shall be entered therein as expeditiously as possible."

Section 50. Section 92-842, R.C.M. 1947, is amended to read as follows:

"**92-842. Annual report — copies for general distribution.** The *division* shall, not later than October *1* of each year, make a report to the governor covering its entire operations and proceedings for the preceding fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such report shall be printed for general distribution."

Section 51. Section 92-903, R.C.M. 1947, is amended to read as follows:

"**92-903. Employer permitted to carry on business and settle directly with employee — renewal of application.** If such employer, making such election, shall be found by the *division* to have the requisite financial ability to pay the compensation and benefits in this act provided for, then the *division* shall grant to *the* employer permission to carry on

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his business for the fiscal year within which such election is made, and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same. Every employer, so long as he continues in his employment, and so long as he continues to be bound by compensation plan No. 1, shall, at least thirty *(30)* days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the board may renew the same from year to year."

Section 52. Section 92-904, R.C.M. 1947, is amended to read as follows:

"**92-904. Additional proof of solvency — revocation of order.** The *division* may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this act, and may at any time, upon notice to such employer of not less than ten *(10)* or more than twenty *(20)* days, after and upon a full hearing, revoke any order or approval theretofore made."

Section 53. Section 92-905, R.C.M. 1947, is amended to read as follows:

"**92-905. Requiring security of employer.** If *the division finds* that *an* employer *does* not *have the* financial responsibility for the payment of the compensation herein provided to be paid, which might reasonably be expected to be chargeable to *the* employer during the fiscal year to be covered by *the* permission, *the division* must require *the* employer, before granting to him permission, or before continuing or engaging in such employment, subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as *the division finds* is reasonable and necessary to meet all liabilities of *the* employer, which may reasonably and ordinarily be expected to accrue during *the* fiscal year. *The* security must be deposited with the *division*, and may be a certain estimated *percent* of *the* employer's last preceding annual payroll, or a certain *percent* of the established amount of his annual payroll for *the* fiscal year or *the* security may be in the form of a bond or undertaking executed to *the division* in the amount to be fixed by it with two *(2)* or more sufficient sureties, which undertaking must be conditioned that *the* employer will well and truly pay, or cause to be paid, all sums and amounts for which the employer shall become liable under the terms of this act to his employees during *the* fiscal year; or such security may consist of any state, county, municipal, or school district bonds, or the bonds or evidence of indebtedness of any individuals or corporations which the *division deems* solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the *division* as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities, or any remaining part thereof, shall be returned to the depositor. The *division is* liable for the value and safekeeping of all such deposits or securities, and shall, at any

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time, upon demand of *a bondsman* or the depositor account for the same, and the earnings thereof."

Section 54. Section 92-906, R.C.M. 1947, is amended to read as follows:

"**92-906. Failure of employer to pay compensation — duty of division.** Upon the failure of *the* employer to pay any compensation provided for in this act, upon the terms and in the amounts and at the times when the same become due and payable, *the division* shall, upon demand of the person to whom compensation is due, apply any deposits made with the *division* to the payment of the same, and *the division* shall take the proper steps to convert any securities on deposit with the *division*, or sufficient thereof, into cash and to pay the same upon the liabilities of *the* employer, accruing under the terms of this act, and *the division shall when* necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to insure the payment of his liability. And to these ends, and for these purposes, the *division* shall be deemed to be the owner of *the* deposit and security and the obligee in *the* bond in trust for the purposes, and may proceed in its own name to recover upon *the* bonds, or foreclose and liquidate *the* securities."

Section 55. Section 92-907, R.C.M. 1947, is amended to read as follows:

"**92-907. When employer to make deposit or security to guarantee payment of compensation.** Within thirty *(30)* days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain, or reasonably certain, the employer shall make a deposit or give security as herein defined with the *division* for the protection and guaranty of the payment of such liability, in such sum as the *division* may direct. *However,* if sufficient securities are already on deposit with the *division*, or if the *division determines* that the employer has sufficient financial responsibility to meet *the* liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded."

Section 56. Section 92-908, R.C.M. 1947, is amended to read as follows:

"**92-908. When employer may be relieved from liability.** Any employer against whom liability may exist for compensation under this act, may, with the approval of the *division*, be relieved therefrom by:

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five *percent* per annum, with the *division*; or,

(2) Purchasing an annuity within the limitations provided by law, in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the *division*."

Section 57. Section 92-1002, R.C.M. 1947, is amended to read as follows:

"**92-1002. Duty of employer electing plan No. 2 — amount of**

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insurance necessary. Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the *division*. Such election shall be accompanied by a certificate issued by the insurer on the form prescribed by the *division*, which shall state the effective date of the policy insuring the employer, its expiration date and such other information as may be required by the *division* to inform the *division* of the adequacy of the insurance."

Section 58. Section 92-1004, R.C.M. 1947, is amended to read as follows:

"**92-1004. Agreement to be contained in policies of insurance — deposit of bonds.** No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the *division*, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, or a corporate surety bond made out to and approved by the *division*, in an amount not less than five thousand dollars ($5,000.00) or more than one hundred thousand dollars ($100,000), as the *division* may determine. If any insurer *fails* to discharge any liability after the amount thereof shall be determined by the *division*, and within the time limited by the *division, the division shall* convert *the* bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability; and thereafter *the* insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the *division* the discretion in the matter of whether an insurer has failed to discharge any liability."

Section 59. Section 92-1005, R.C.M. 1947, is amended to read as follows:

"**92-1005. Policies made subject to this act — assessment of insurers.** *(1)* Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms have been approved by the *division*, and as otherwise provided by law.

(2) On or before July *1* of each year, the *division* shall assess and each insurer shall pay to the *division* not to exceed three and one-fourths per cent (3 ¼%) of its gross annual direct premiums collected in Montana on policies of insurance insuring employers who elected to become bound by compensation plan No. 2 during the previous calendar year, less return premiums. No such assessment shall be less than two hundred dollars ($200). The *division* shall pay the amounts so collected into the state treasury. Payments by *the* insurers under this section shall be considered as items of loss for rate-making purposes."

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Section 60. Section 92-1006, R.C.M. 1947, is amended to read as follows:

"**92-1006. Renewals.** Every certificate of renewal of such policy shall be made and delivered to *the division* at least thirty *(30)* days prior to the expiration of the expiring policy."

Section 61. Section 92-1007, R.C.M. 1947, is amended to read as follows:

"**92-1007. Deposits by insurer with division.** Within thirty *(30)* days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the *division* for the protection and guarantee of the payment of such liability in such sum as the *division* may direct. *However,* if the *division* deems the amount on deposit by *the* insurer under the provisions of section 92-1004 sufficient to cover all liabilities of the insurer, then no further deposit shall be required."

Section 62. Section 92-1008, R.C.M. 1947, is amended to read as follows:

"**92-1008. How insurer relieved from liability.** Any insurer against whom liability may exist for compensation under this act, may, with the approval of the *division*, be relieved therefrom by*:*

(1) Depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at five *percent* per annum, with the *division*; or*,*

(2) By purchasing an annuity within the limitations provided by law in any insurance company granting annuities, and authorized to transact business in this state, subject to the approval of the *division.*"

Section 63. Section 92-1009, R.C.M. 1947, is amended to read as follows:

"**92-1009. Cancellation of insurance policy.** No policy of insurance issued under the provisions of compensation plan No. 2 shall be canceled within the time limited for its expiration except upon thirty *(30)* days' notice to the employer in favor of whom such policy is issued, and to the *division*, unless such policy sought to be canceled shall have been sooner replaced by other insurance."

Section 64. Section 92-1010, R.C.M. 1947, is amended to read as follows:

"**92-1010. Report of insurance companies to division.** Every insurance company transacting business under this act shall, at the time and in the manner prescribed by the *division*, make and file with the *division* such reports of accidents as the *division* may require."

Section 65. Section 92-1101, R.C.M. 1947, is amended to read as follows:

"**92-1101. What necessary in electing plan No. 3 — percentage of payroll to be paid under plan.**

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COMPENSATION PLAN NUMBER THREE

Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the *division*, pay to the *division* a premium based on a percentage of his payroll as determined by the *division* which shall be a member of a rating organization in accordance with the provisions of this act."

Section 66. Section 92-1102, R.C.M. 1947, is amended to read as follows:

"**92-1102. Permitting employers to elect to comply and come under the provisions of this act.** An employer shall comply with the provisions of this act, in which event he will not be liable to respond in damages at common law or by statute for injury or death of an employee and shall enjoy the benefits and privileges of this act. The employee of the employer is considered to come under the provisions of this act unless the employee executes and files with the division on proper forms to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until the election is withdrawn."

Section 67. Section 92-1103, R.C.M. 1947, is amended to read as follows:

"**92-1103. Manner of electing — contract or policy of insurance — payment of premium.** The *division* shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the *division* a contract or policy of insurance in a form approved by the *division*. The premium thereon shall be paid by the employer, to the *division* at such times as the *division* shall prescribe and shall be paid over by the *division* to the state treasurer to the credit of the industrial insurance account in the agency fund."

Section 68. Section 92-1104, R.C.M. 1947, is amended to read as follows:

"**92-1104. Classifications by division.** The *division* is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience, and as member of a rating organization as is otherwise provided for in this code, may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making such change."

Section 69. Section 92-1105, R.C.M. 1947, is amended to read as follows:

"**92-1105. Intent and purpose of plan No. 3.** *(1)* It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of *the* plan shall be liable to pay for injuries happening to employees coming under the provisions of the *Workers'* Compensation Act.

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(2) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance account in the agency fund.

(3) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the *division* as a member of a rating organization into classes, whose rates may be readjusted at such times as the *division* as a member of such rating organization may determine. Separate accounts shall be kept of the amounts collected and expended in each class for determining rates but for payment of compensation and dividends the industrial insurance account shall be one and indivisable. The *division* as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of a solvent industrial insurance fund, and the creation of surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk, and shall take advantage of the experience and information afforded to it as a member of such rating organization.

(4) The *division* in fixing rates shall provide for the expenses of administering the industrial insurance account allowed by law, the disbursements on account of injuries and deaths of employees in each class, an adequate catastrophe reserve, reserves adequate to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the *division* as a member of such rating organization."

Section 70. Section 92-1105.1, R.C.M. 1947, is amended to read as follows:

"**92-1105.1. Advanced rate for dangerous places of employment.** If by reason of poor or careless management, or otherwise, any place of employment *is* unduly dangerous in comparison with other like places of employment, and the employer operating the same *has* not complied with the safety provisions of the Montana Safety Act, and *the* employer *is* under compensation plan number 3, the *division*, in addition to any other penalty provided, shall advance the rate upon such place of employment fifty (50) per cent. *The* advanced rate shall continue and be in force until *the* place of employment *has* ceased to be unduly dangerous in comparison with other like places of employment and *the* employer *has* obtained a certificate of the *division*."

Section 71. Section 92-1108, R.C.M. 1947, is amended to read as follows:

"**92-1108. In case of default, rates to be advanced twenty-five per cent (25%).** Any employer who is in default in the observance of any order of the *division*, issued pursuant to the provisions of sections 92-1101 to 92-1105, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five *percent* (25%) over the established rate, and such advanced rate shall continue and be in force until *the* employer *has* ceased to be in default."

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Section 72. Section 92-1110, R.C.M. 1947, is amended to read as follows:

"**92-1110. Surplus in industrial insurance account.** If at the end of any fiscal year, there exists in the industrial insurance account in the agency fund an excess of assets over liabilities, and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the *division* may declare a dividend in such manner as the rules of the *division* may prescribe, to those employers who have paid premiums into the industrial insurance account in the agency fund in excess of liabilities chargeable to them in the account in the agency fund for that year. In determining the amount or proportion of *the* balance to which *the* employer is entitled as dividends, the *division* shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 73. Section 92-1112, R.C.M. 1947, is amended to read as follows:

"**92-1112. Investment of reserve — payment of installments.** The *division* shall turn over *the* reserve to the board of *investments* to be invested and the same shall be invested by *the* board of *investments* as part of the long term investment fund and out of the same and its earnings shall be paid the monthly installments, and any lump sum, then or thereafter arranged for. *However,* when there is sufficient money in the industrial insurance account in the agency fund to meet such compensation payments, any surplus remaining may be invested as specified in this section."

Section 74. Section 92-1113, R.C.M. 1947, is amended to read as follows:

"**92-1113. Division to keep accounts of segregations.** The *division* shall keep an accurate account of all such segregations of the industrial insurance account in the agency fund, and shall divert from the account any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 75. Section 92-1114, R.C.M. 1947, is amended to read as follows:

"**92-1114. Collection in case of default by employer — cancellation of right to operate under plan No. 3 for failure to pay premium.** *(1)* If any employer under plan No. 3 shall default in any payment to the *division*, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The *division* is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the *Workers'* Compensation Act for failure to pay the premiums due. *When* the *division* makes an order canceling an employer's right for failure to pay premiums it shall be the duty of the *division* to make such order at least thirty (30) days before the cancellation becomes effective and to send a formal notice to the sheriff or sheriffs of the county or counties where the employer is oper-

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ating, and it shall be the duty of the said sheriff or sheriffs to post a notice in at least three (3) conspicuous places where the *workers* can readily see said notices, to the effect that the *division* has canceled the right of the said employer to operate under the act; and said notice shall give the date of the effectiveness of said order. After *the* cancellation date the employer shall have the same status as an employer who is not enrolled under the *Workers'* Compensation Act.

(2) When an employer's right to operate has been canceled by the *division* for failure to pay premiums and when the *division*, in its discretion finds that the property and assets of *the* employer are not sufficient to pay *the* premiums, the *division* may compromise *the* claim for premiums and accept a payment of an amount less than the total amount due."

Section 76. Section 92-1115, R.C.M. 1947, is amended to read as follows:

"**92-1115. Injury happening while employer is in default.** For any injury happening to any of *the employer's workers* during default in any payment to the *division*, the defaulting employer as to such injury shall be considered as having elected not to come under the provisions of this act, except that he shall be and remain liable to pay to the *division* the amount of such default, together with the penalty prescribed by section 92-1108."

Section 77. Section 92-1117, R.C.M. 1947, is amended to read as follows:

"**92-1117. Prosecution or settlement of cause of action.** Any cause of action assigned to the state under the preceding section may be prosecuted or compromised by the *division*, in its discretion."

Section 78. Section 92-1118, R.C.M. 1947, is amended to read as follows:

"**92-1118. Application for compensation under plan No. 3.** Where a *worker* is entitled to compensation under compensation plan No. 3, *the worker* shall file with the *division an* application therefor, together with the certificate of the physician who attended him, and it shall be the duty of such physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the *division* without charge to the workman. *The* filing of a certificate of the attending physician *does* not constitute a sworn claim for compensation."

Section 79. Section 92-1119, R.C.M. 1947, is amended to read as follows:

"**92-1119. Payment of physician.** For a proper compliance with the provisions of the preceding section, the physician, after approval by the *division*, shall be paid out of the *division's* administrative moneys in the earmarked revenue fund, one and one-half dollars ($1.50) for each case."

Section 80. Section 92-1120, R.C.M. 1947, is amended to read as follows:

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"92-1120. **Application in case of death.** Where death results from the injury, the parties entitled to compensation under compensation plan No. 3, or someone in their behalf, shall make application for the same to the *division.* The application must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the *division.*"

Section 81. Section 92-1122, R.C.M. 1947, is amended to read as follows:

"92-1122. **Disbursements out of industrial accident account — employer to pay warrant.** Disbursements out of the industrial insurance account in the agency fund shall be made by the *division.* If at any time there *is* not sufficient money in the account with which to pay any warrants drawn thereon, the employer, on account of whose *workers* the warrant was drawn, shall pay the same, and upon his next contribution to *the* account he shall be credited with the amount so paid, with interest thereon at the rate of six *percent* per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such account for the excess, and if *the* warrant *is* not paid for want of funds, it shall be credited to *the* employer and be applied upon succeeding assessments."

Section 82. Section 92-1123, R.C.M. 1947, is amended to read as follows:

"92-1123. **Earnings and interest on deposits.** All earnings made by the industrial insurance account in the agency fund by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of *the* account, and the making of profit, either directly or indirectly, by any person, out of the use of the account shall constitute a felony, and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding two years, or a fine not exceeding five thousand dollars ($5,000.00), or both such fine and imprisonment."

Section 83. Section 92-1401, R.C.M. 1947, is amended to read as follows:

"92-1401. **Reference to vocational rehabilitation division of injured workers.** The *division of workers' compensation* shall refer to the *department of social and rehabilitation services workers* who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the *Workers'* Compensation Act of the state of Montana and who in the opinion of *the division* can be vocationally rehabilitated. *The department of social and rehabilitation services* shall provide for the vocational rehabilitation of *the* injured *workers* under the provisions of Title 41, Chapter 8, *R.C.M.* 1947."

Section 84. Section 92-1402, R.C.M. 1947, is amended to read as follows:

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"92-1402. **Certification of determination to division — review of award.** When *the department of social and rehabilitation services* has provided all feasible vocational rehabilitation to an injured *worker* or has determined that vocational rehabilitation is not possible or feasible, it shall certify its determination to *the division*, at which time *the division* shall reconsider and review any previous award of compensation to *the* injured *worker* which is then in effect."

Section 85. Section 92-1406, R.C.M. 1947, is amended to read as follows:

"92-1406. **Industrial accident rehabilitation account.** *(1)* The payments provided in section 92-1403 shall be made from the industrial accident rehabilitation account in the agency fund. Payments to *the* account shall be made on or before July *1* of each year as follows:

(a) By each employer operating under the provisions of plan one of the *Workers'* Compensation Act, an amount to be assessed by the *division*, not exceeding one per cent (1%) of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year.

(b) By each insurer insuring employers under the provisions of plan two of the *Workers'* Compensation Act an amount to be assessed by the *division*, not exceeding one per cent (1%) of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year.

(c) By the *division* an amount to be determined by the *division*, not exceeding one per cent (1%) of the compensation paid to injured employees in Montana from the industrial insurance account in the agency fund and the occupational disease account in the agency fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the agency fund shall be kept for each of the plans. If in any fiscal year, the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the *division* which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the *department of social and rehabilitation services* and upon audit and approval by the *department of administration.*

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the *division* or *department of social and rehabilitation services.*"

Section 86. Section 92-101, R.C.M. 1947, is amended to read as follows:

"92-101. **Name of act — what each part to contain.** This act shall

be known and may be cited as the Workmen's Compensation Act *or the Workers' Compensation Act.* Part I (sections 92-101 to 92-843) shall contain those sections which have a general application to the whole of the act, and may be referred to as the "general provisions"; part II (sections 92-901 to 92-908) shall contain those sections which refer to compensation plan number one; part III (sections 92-1001 to 92-1012) shall contain those sections which refer to compensation plan number two; part IV (sections 92-1101 to 92-1123) shall contain those sections which refer to compensation plan number three."

Section 87. Section 82A-1004, R.C.M. 1947, is amended to read as follows:

"82A-1004. Division of workers' compensation — creation — head. (1) There is created a division of *workers'* compensation within the department. The division head is an administrator appointed by the governor as are directors in accordance with section 82A-106 of this act. *Any reference in the Revised Codes of Montana, 1947, to the industrial accident board or the division of workmen's compensation means the division of workers' compensation.*

(2) The division is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the division may hire its own personnel, and section 82A-108(2)(d) does not apply."

Section 88. Sections 92-104, 92-105, 92-108 through 92-110, 92-112 through 92-115, 92-414, 92-415, 92-419, 92-420, 92-427, 92-428, 92-430, 92-431, 92-611, 92-612, 92-841, 92-843, 92-1404, R.C.M. 1947, are repealed.

Approved February 26, 1975.

CHAPTER NO. 24

AN ACT ALLOWING A THIRD CLASS CITY TO RETAIN THE COUNTY ATTORNEY FOR LEGAL MATTERS NOT INVOLVING A CONFLICT OF INTEREST; AMENDING SECTION 11-702, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-702, R.C.M. 1947, is amended to read as follows:

"11-702. Officers of city of second and third classes. The officers of a city of the second and third classes consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city clerk, who is ex officio city assessor, one chief of police, one city attorney, and any other officer

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necessary to carry out the provisions of this title. The city council may prescribe the duties of all city officers, and fix their compensation, subject to the limitations contained in this title. *A third class city may retain the county attorney to provide legal services for the city in cases not involving a conflict between the interests of the city and the county either by an interlocal cooperation agreement or by mutual consent by the governing bodies of the city and county.*"

Approved February 26, 1975.

CHAPTER NO. 25

AN ACT ALLOWING PUBLIC INSPECTION OF THE RECORDS OF THE DIVISION OF WORKMEN'S COMPENSATION, PROVIDING EXEMPTIONS, AND REPEALING SECTIONS 92-809 AND 92-1348, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 92-844 that reads as follows:

92-844. Public records — right to inspect. Each person has a right to inspect any public record of the division of workmen's compensation, except as otherwise expressly provided by law. For the purposes of this act "public record" means any writing containing information relating to the conduct of the public's business, prepared, owned, used or retained by a public body regardless of physical form or characteristics.

Section 2. There is a new R.C.M. section numbered 92-845 that reads as follows:

92-845. Duties of administrator. The administrator of the division shall furnish proper and reasonable opportunities for inspection and examination of the records under his control and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to examine them. The administrator may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of his duties.

Section 3. There is a new R.C.M. section numbered 92-846 that reads as follows:

92-846. Certified copies of public records — fees. (1) The administrator of the division shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The administrator of the division may establish fees reasonably calculated to reimburse the division for its actual cost in making such records available.

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Section 4. There is a new R.C.M. section numbered 92-847 that reads as follows:

92-847. Records exempt from disclosure. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the division contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the administrator of the division shall separate the exempt and nonexempt and make the nonexempt material available for examination.

Section 5. Sections 92-809 and 92-1348, R.C.M. 1947, are repealed.

Approved February 26, 1975.

CHAPTER NO. 26

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 75-6201, 75-6207, 75-6208, AND 75-6213, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6201, R.C.M. 1947, is amended to read as follows:

"75-6201. Definitions. As used in this title, unless the context clearly indicates otherwise:

(1) "Retirement system" means the teachers' retirement system of the state of Montana provided for in section 75-6202.

(2) "Retirement board" means the retirement system's governing board provided by section 82A-212.

(3) "Employer" means the state of Montana, trustees of any district, or other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(4) "Member" means any person who has an individual account in the

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annuity savings fund; an active member is any person included under the provisions of section 75-6209; an inactive member is any person included under the provisions of section 75-6210.

(5) "Beneficiary" means any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by the retirement system.

(6) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of section 75-6209.

(7) "Prior service" means employment of the same nature as service defined in subsection (6) of this section but rendered before September 1, 1937.

(8) "Creditable service" is that service defined by section 75-6212.

(9) "Regular interest" means interest at four per cent (4%) per annum compounded annually, or at such other rate as may be set by the retirement board in accordance with subsection (2) of section 75-6206.

(10) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(11) "Earnable compensation" means the full rate of the compensation, pay or salary that would be payable to a member if he worked the full normal working time. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(12) "Average final compensation" means the average of the earnable compensation of any three (3) consecutive years on which *contributions have* been made by the member.

(13) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions. All annuities shall be paid in equal monthly installments. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

(14) "Pension" means the payments made to a beneficiary for life which are paid into the pension fund derived from money accumulated by employers. All pensions shall be paid in equal monthly installments.

(15) "Retirement allowance" means the annuity plus the pension.

(16) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity and computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(17) "Pension reserve" means the present value of all payments to be

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made on account of a pension and computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(18) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(19) "Former retirement system" means the retirement system established under sections 1113 to 1132 inclusive, of the Revised Codes of Montana, 1935."

Section 2. Section 75-6207, R.C.M. 1947, is amended to read as follows:

"**75-6207. Method of financing.** The retirement board shall establish and maintain the following funds in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(1) Annuity savings fund. The annuity savings fund shall be a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner.

(a) Each employer shall deduct from the compensation of each active member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to *six and one-eighth percent (6 ⅛%)* of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty (60) and rendered *thirty (30)* years of creditable service if such member elects not to contribute.

(b) Such deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member shall be deemed to consent and agree to the deductions prescribed by this section; and payment of salary or compensation less the deductions shall be a full and complete discharge of all claims whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by the retirement system.

(c) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions plus interest in the amount the contributions would have earned had the contributions not been withdrawn, or any part thereof, which he had previously withdrawn. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the pension accumulation fund. Upon the retirement of a

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member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) Annuity reserve fund. The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each employer shall pay into the pension accumulation fund an amount equal to *six* and one-fourth percent *(6 ¼%)* of the earnable compensation of each member employed during the whole or part of the preceding payroll period.

(b) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of section 75-7204.

(c) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system or the Montana state deaf and blind school, the legislative assembly shall appropriate to each employer an adequate amount to allow the payment of the employer's contribution.

(d) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under such budget.

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under section 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

(4) Expense fund. The expense fund shall be the fund to which shall be credited all moneys for the administrative expenses of the retirement

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system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund from interest and other earnings realized on the moneys of the retirement system."

Section 3. Section 75-6208, R.C.M. 1947, is amended to read as follows:

"**75-6208. Benefits.** The retirement, disability and other benefits of the retirement system shall be granted on the basis of the following provisions:

(1) Superannuation member retirement:

(a) Any member *with* five (5) years of creditable service the last five (5) years of which shall have been in this state, and who has attained the age of sixty (60), or who has completed *thirty (30)* years of creditable service, may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) Any member in service who has attained the age of seventy (70) years during any school year shall be retired on the first day of September following his seventieth birthday, except that this provision shall not apply to teachers in the Montana university system who may be employed beyond the age of seventy (70) upon the recommendation of the president of the employing unit to the board of regents. Members over seventy (70) years of age shall not: (1) be allowed creditable service for services rendered after the end of the school year in which the age of seventy (70) is attained, (2) contribute to the retirement system after the end of such school year, and (3) have the compensation received after the end of such school year used in computing average final salary. Initial employment of teachers in the Montana university system beyond the age of seventy (70) may be made upon the recommendation of the president of the employing unit and the approval of the board of regents but such employees shall be denied membership in the retirement system.

(c) Any retired member may be employed as a *part-time or substitute* teacher in Montana and may earn an amount not to exceed one-fourth (¼) of his average final compensation without loss of retirement benefits.

(2) Allowance for superannuation retirement. Upon superannuation retirement a member shall receive a retirement allowance which shall consist of:

(a) A pension which, together with an annuity, shall provide a retirement allowance equal to one-half (½) of his average final compensation provided his creditable service is at least *thirty (30)* years, otherwise a pension together with his annuity of *one sixtieth (1/60)* of his average final compensation multiplied by the number of years of creditable service.

(b) The minimum annual retirement allowance for a member who has completed *thirty (30) or more* years of service shall be twenty-four hundred dollars ($2,400) and the minimum retirement allowance for a member

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whose service is less than *thirty (30)* years shall be based on the proportionate amount of twenty-four hundred dollars ($2,400) that his service bears to *thirty (30)* years of service.

(c) On July 1, 1975, *and July 1, 1976,* every beneficiary receiving a retirement allowance shall be entitled to an increase in his monthly retirement allowance of one-fourth of one percent (.25%) multiplied by the number of months he has been retired during the preceding fiscal year.

(d) Any member who has completed five (5) years of creditable service, the last five years of which shall have been in this state, and who has attained the age of fifty-five (55) may retire from service and be eligible to an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections (a) through (f) above, with the further provision that such allowance will be reduced by one half of one percent (.5%) multiplied by the number of months which the retirement date precedes the date on which he would have retired had he attained sixty (60) years of age or had he completed *thirty (30)* years of creditable service.

(e) In the event of death of a member after retirement, a death benefit of five hundred dollars ($500) will be payable to his designated beneficiary.

(f) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) Disability member retirement:

(a) Upon the application of an active member or of his employer, any active member who has five (5) or more years of creditable service may be retired by the retirement board *the month immediately following the month in which his disability caused his retirement upon* filing *an* application *for* a disability retirement allowance. Before any member shall be eligible for a disability retirement, the board of the retirement system shall certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent and that he should be retired.

(b) Re-examination of beneficiaries retired on account of disability. Once each year during the first five (5) years following the retirement of a member on disability retirement allowance, and once in every three (3) year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty (60) to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty (60) refuse to submit to at least one (1) medical examination in any year by the medical board or its representa-

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tive, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his disability pension may be revoked by the retirement board.

(c) Should the medical board report and certify to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be changed later, the amount of his pension may be further modified but the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.

(d) Should a disability beneficiary under age sixty (60) be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force and effect an addition upon his subsequent retirement, *and* he shall be credited with all his subsequent service as a member. Should he be restored to active service on or after the attainment of the age of fifty-five (55) years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

(4) Allowance for disability retirement. Upon retirement for disability, a member shall receive a superannuation allowance prescribed under subsection (2) above if he is eligible; otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement.

(b) A pension which together with his annuity, shall provide a total retirement allowance equal to *one sixtieth (1/60)* of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter (¼) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter (¼) of his average final compensation, provided, however, that no such allowance shall exceed *one sixtieth (1/60)* of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

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(c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death, the difference between the total retirement allowance paid and the amount of the accumulated contributions of the member shall be paid to the beneficiary.

(5) Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions to his annuity account in the retirement system in accordance with the following provisions:

(a) An inactive member under the provisions of subsections (1) or (3) of section 75-6210 may elect, without right of revocation to withdraw his accumulated contributions, and if he does not withdraw his accumulated contributions he shall thereafter remain an inactive member of the retirement system with the right to qualify for the benefits of the retirement system;

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of subsection (2) of section 75-6210 may withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of subsection (4) of section 75-6211 may withdraw his accumulated contributions.

(6) Allowances for death of member.

(a) Should a member die before retirement the amount of the member's accumulated contributions shall be paid to his estate or such person as he may have designated in the manner prescribed by the retirement board which shall be filed with the board prior to the member's death.

(b) In lieu of benefits provided in (a) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in subsections (2) (a) through (2) (h) assuming the member had elected option A as prescribed in subsection (7) (a) below. In addition, if the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, a lump sum death benefit of $500 will be payable to his designated beneficiary.

(c) If the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, the sum of *one hundred dollars ($100)* per month shall be paid to each minor child of the deceased member until such child reaches his eighteenth (18th) birthday.

(7) Optional allowances. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active

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member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided. This benefit shall be referred to as the normal form of retirement allowance. In lieu of normal form of retirement allowance, the member may elect an optional allowance which would be the actuarial equivalent at the time of his retirement or disability allowance and would provide an allowance payable throughout his lifetime and upon his death continue to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement with the provision that:

(a) Option A. The optional allowance will continue to the member during his lifetime and upon his death, continue throughout the lifetime of his designated beneficiary; or

(b) Option B. The optional allowance will continue throughout his lifetime and upon his death, one-half (½) of his optional allowance will be continued throughout the lifetime of his designated beneficiary; or

(c) Option C. The optional benefit will continue throughout his lifetime and upon his death, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of his designated beneficiary; or

(d) Option D. The optional allowance shall continue while both the member and his designated beneficiary are living and upon the death of either, one-half (½) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(e) Option E. The optional allowance will be payable while both the member and his designated beneficiary are living and upon the death of either, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(f) Option F. Some other benefit or benefits shall be paid either to the member or his surviving designated beneficiary. The provisions of this retirement allowance shall be approved by the retirement board."

Section 4. Section 75-6213, R.C.M. 1947, is amended to read as follows:

"**75-6213. Creditable service for out-of-state employment, employment while on leave, for active service in the armed forces of the United States and the American red cross or merchant marine, and before September, 1937.** Any person applying for membership also may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this title if such service were performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than five (5) years, if he contributes to the retirement system an amount equal to *the employee contribution for* his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution

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would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. *The contribution rate shall be that rate in effect at the time he is eligible for service.* The contributions may be a lump-sum payment or in installments as agreed between the person and the retirement board; and

(1) Any person applying for membership also may apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon completing five (5) years of active membership in Montana subsequent to his return, provided his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board but for not more than two (2) years, if he contributes to the retirement system an amount equal to *the combined employer and employee contributions for* his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of five (5) years of membership service in Montana. *The contribution rate shall be that rate in effect at the time he is eligible for such service.* The contribution may be a lump-sum payment or in installments as agreed between the person and the retirement board; and

(2) Any person applying for membership also may apply for creditable service in the retirement system for active service in the armed forces of the United States which includes the army, navy, marine corps, air force and coast guard or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing five (5) years of active membership in Montana, for the number of years the retirement board determines to be creditable service but for not more than two (2) years, if he contributes to the retirement system an amount equal to *the combined employer and employee contributions for* his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine *for each year of creditable service* plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of five (5) years of membership service in Montana. *The contribution rate shall be that rate in effect at the time he is eligible for such service.* The contribution may be a lump-sum payment or in installments as agreed between the person and the retirement board; however

(3) In no event will the total creditable service for out-of-state teaching, employment while on leave, or while on active service in the armed forces of the United States or the American red cross or merchant marine exceed five (5) years.

Whenever a member is retiring with at least five (5) years of creditable service and he has been an active member for at least five (5) consecutive school fiscal years, he may request creditable service for any employment service he rendered prior to the first day of September, nineteen hundred and thirty-seven (1937) for which he has not received a prior service certificate. In order to receive such creditable service, he shall apply for it and

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provide certification of such service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate."

Approved February 26, 1975.

CHAPTER NO. 27

AN ACT TO AMEND SECTION 16-910, R.C.M. 1947, TO ALLOW THE GOVERNING BODY OF THE COUNTY TO MEET AT ANY TIME FOR THE PURPOSE OF ATTENDING TO COUNTY BUSINESS; AND REPEALING SECTION 16-911, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-910, R.C.M. 1947, is amended to read as follows:

"**16-910. Regular meetings — extra sessions.** The *governing body of the county,* except as may be otherwise required of them, may meet at the county seat of their respective counties *at any time* for the purpose of *attending to county business. Commissioners may, by resolution and prior two days' posted public notice, designate another meeting time and place. The governing body of the county shall establish by resolution a regular meeting date and notify the public of that date.*"

Section 2. Section 16-911, R.C.M. 1947, is repealed.

Approved March 7, 1975.

CHAPTER NO. 28

AN ACT TO PERMIT THE PUBLIC SERVICE COMMISSION TO VALUE PUBLIC UTILITY PROPERTY AT ANY LEVEL WHICH DOES NOT EXCEED THE ORIGINAL COST OF THE PROPERTY; AMENDING SECTION 70-106, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-106, R.C.M. 1947, is amended to read as follows:

"**70-106. Power of commission to ascertain property values.** The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. *The commission is not bound to accept or use any particular value in determining rates, provided that if any value is used, such value may not exceed the original cost of the property.* In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public

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records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property."

Approved March 7, 1975.

CHAPTER NO. 29

AN ACT TO AMEND SECTION 75-7205, R.C.M. 1947, TO ALLOW THE ESTABLISHMENT OF A BUILDING RESERVE FUND FOR THE PURPOSE OF PURCHASING LAND; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7205, R.C.M. 1947, is amended to read as follows:

"**75-7205. Purpose and authorization of a building reserve fund by an election.** The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping or enlarging of school buildings *or for the purpose of purchasing land* needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(1) the purpose or purposes for which the new or addition to the building reserve will be used;

(2) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(3) the total amount of money that will be raised during the duration of time specified in subsection (2); and

(4) any other requirements under section 75-6406 for the calling of an election.

The total amount of building reserve when added to the outstanding indebtedness of the district shall not be more than five per cent (5%) of the value of the taxable property of the district. Such limitation shall be determined in the manner provided in section 75-7104. A building reserve tax authorization shall not be for more than twenty (20) years.

The election shall be conducted in accordance with the school election laws of this title and the electors qualified to vote in the election shall be qualified under the provisions of section 75-6410. The ballot for a building reserve proposition shall be substantially in the following form:

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OFFICIAL BALLOT
SCHOOL DISTRICT BUILDING RESERVE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BUILDING RESERVE—YES" if you wish to vote for the establishment of a building reserve (addition to the building reserve); if you are opposed to the establishment of a building reserve (addition to the building reserve) make an X or similar mark in the square before the words "BUILDING RESERVE—NO."

Shall the trustees be authorized to impose an additional levy each year for .... years to establish a building reserve (add to the building reserve) of this school district to raise a total amount of .... dollars ($....), for the purpose(s) .... (here state the purpose or purposes for which the building reserve will be used).

☐ BUILDING RESERVE—YES.

☐ BUILDING RESERVE—NO.

The building reserve proposition shall be approved if a majority of those electors voting at the election approve the establishment of or addition to such building reserve. The annual budgeting and taxation authority of the trustees for a building reserve shall be computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve shall lapse when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve shall be used for such purpose or purposes before any money realized by the bond issue is used."

Section 2. This act is effective on its passage and approval.

Approved March 7, 1975.

CHAPTER NO. 30

AN ACT TO AMEND SECTION 84-1840, R.C.M. 1947, TO PROVIDE THAT FUNDS ALLOCATED THEREUNDER BE ON A MONTHLY BASIS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1840, R.C.M. 1947, is amended to read as follows:

"**84-1840. Disposition of funds.** All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue

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fund to the credit of the department of highways except those funds hereinbelow allocated to cities, towns and counties, which funds shall be paid by the state treasurer directly to such cities, towns and counties.

(1) Three million dollars ($3,000,000) of the funds collected under this act shall be allocated each fiscal year *on a monthly basis* to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance and repair of rural roads, and city or town streets and alleys, as provided in subsections (a) and (b) hereof,

(a) One million two hundred thousand dollars ($1,200,000) shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) One million eight hundred thousand dollars ($1,800,000) shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities and towns, shall inform the department of highways of the purposes for which the funds shall be expended so that the county commissioners, the governing body and the department of highways may co-ordinate the expenditure of public funds for road improvements.

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(4) All funds hereby allocated to counties, cities and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction and maintenance or repair is in excess of $4,000.

(5) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment."

Approved March 7, 1975.

CHAPTER NO. 31

AN ACT TO AMEND SECTIONS 32-2605, 32-2606, 32-2607, 32-2609, 32-2611, 32-2613, 32-2618, 32-2622 AND 32-2623, R.C.M. 1947, TO CHANGE THE DATE ON WHICH STATE HIGHWAY CONSTRUCTION FUNDS WILL BE APPORTIONED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2605, R.C.M. 1947, is amended to read as follows:

"**32-2605. Apportionment of state construction funds.** *Each* fiscal year the department shall apportion available state construction funds to the various federal-aid highway systems which are required to match the amounts of federal aid available for expenditure on each respective system. The state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section and this cost shall be credited to the accounts of the highway system, financial district, county or urban city involved as an offset to the charges made to the accounts as a result of the final judgment. The deductions may be made only when the amount of these judgments would prohibit or seriously impair the highway construction program in a financial district, county or urban city."

Section 2. Section 32-2606, R.C.M. 1947, is amended to read as follows:

"**32-2606. Apportionment of state funds to federal-aid primary**

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highway system. (1) *Each* fiscal year the department shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompleted mileage, the department shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The department shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The department shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio."

Section 3. Section 32-2607, R.C.M. 1947, is amended to read as follows:

"32-2607. Apportionment of state funds to federal-aid secondary highway system. (1) *Each* fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth (¼) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth (¼) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth (¼) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth (¼) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last apportionment to the county. The amount of any excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

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(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the department shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available."

Section 4. Section 32-2609, R.C.M. 1947, is amended to read as follows:

"**32-2609. Apportionment of state funds to federal-aid interstate highway system.** (1) *Each* fiscal year the department shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the department in accordance with the Federal-Aid Highway Act of 1956, as amended."

Section 5. Section 32-2611, R.C.M. 1947, is amended to read as follows:

"**32-2611. Apportionment of state funds to federal-aid urban highways.** (1) *Each* fiscal year the department shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any excess expenditures shall be deducted from future apportionments to that city."

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Section 6. Section 32-2613, R.C.M. 1947, is amended to read as follows:

"**32-2613. Allocation for safety construction programs.** *Each* fiscal year the department of highways shall allocate available state construction funds to match federal-aid highway funds made available by the Federal-Aid Highway Act of 1973 for the following safety construction programs: rail-highway crossings, high hazard locations, elimination of roadside obstacles, safer roads demonstration and pavement marking demonstration. Such allocation shall be made from available state construction moneys before the apportionments provided for in sections 32-2606, 32-2607 and 32-2611, R.C.M. 1947."

Section 7. Section 32-2618, R.C.M. 1947, is amended to read as follows:

"**32-2618. Apportionment of funds.** *Each* fiscal year *the department shall* apportion available state construction funds among the approved priority primary routes. This apportionment shall be based on the ratio between the estimated cost of constructing or reconstructing each selected route and the estimated cost of constructing or reconstructing all then approved priority primary routes."

Section 8. Section 32-2622, R.C.M. 1947, is amended to read as follows:

"**32-2622. Allocation of funds.** *Each* fiscal year the department shall allocate available state construction funds to match federal-aid highway funds made available for economic growth center development highways. Such allocation shall be made from available state construction moneys before the apportionments provided in sections 32-2606, 32-2607 and 32-2611, R.C.M. 1947."

Section 9. Section 32-2623, R.C.M. 1947, is amended to read as follows:

"**32-2623. Apportionment of funds.** *Each* fiscal year *the department shall* apportion state construction funds among the approved economic growth centers as follows:

(1) The allocation for the 1974 fiscal year shall be the ratio of the number of miles of highways that need upgrading in existence on July 1, 1973, on the primary and urban systems in each approved growth center's area of influence to the total number of miles in all approved growth centers' area of influence that need upgrading.

(2) Thereafter, the allocation shall be in the ratio of the number of miles in existence on July 1 of a fiscal year on the primary, secondary and urban systems in each approved growth center's area of influence that need upgrading to the total number of miles in all approved growth centers' area of influence that need upgrading.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any approved growth center may exceed the amount apportioned to the growth center. The amount of any

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such excess expenditures shall be deducted from future apportionments to that growth center."

Approved March 7, 1975.

CHAPTER NO. 32

AN ACT TO PROVIDE FOR A TAX ON FIRE INSURANCE PREMIUMS FOR THE PURPOSE OF ADJUSTING PENSIONS OF FIREMEN WHO RETIRED PRIOR TO JULY 1, 1973, OR THEIR WIDOWS AND ORPHANS, AND TO PROVIDE FOR DISBURSEMENT OF THAT REVENUE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section that reads as follows:

11-1927.2. Pension adjustment for retired firemen. (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state, authorized to effect insurance on risks enumerated in section 11-1919, there is a tax of one and one-half percent (1 ½%) on the fire portion of the direct premiums received during the calendar year of 1975 and each succeeding year thereof with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the monies in an earmarked revenue fund. The auditor shall pay claims as provided in subsection (2) of this section. As those persons who are to receive the fund decease, the tax shall be reduced proportionately and when no eligible person, as determined in subsection (2) of this section, survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each and every fire department relief association, organized and existing under the laws of this state, shall pay to the firemen retired before July 1, 1973, or their widows and orphans, a monthly compensation of not less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In case of volunteer firemen, such pension shall in no event exceed the sum of seventy-five dollars ($75) per month. Distribution of the funds provided for this purpose under subsection (1) of this section shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of the fire department relief association legally existing in every city or town shall request and the state auditor shall issue from the earmarked revenue fund, and deliver to the treasurer of every city or town, an amount certified to be equal to the sum total of the annual dollar difference between what the retirees or their widows and orphans received from the fund of the relief association and one-half (½) of the sum paid by the respective city or town to the position of a confirmed active fireman for the fiscal year just preceding.

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(b) The treasurer of each city or town receiving the funds shall immediately disburse them to the treasurer of the respective relief association.

(c) The treasurer of each relief association shall utilize these funds to supplement the monthly pension of retirees or their widows and orphans to an amount equal to one-half (½) of the salary that was paid to the position of a confirmed active fireman in said city or town for the preceding year.

Approved March 7, 1975.

CHAPTER NO. 33

AN ACT TO AMEND SECTION 53-106.8, R.C.M. 1947, TO REPLACE THE WORD "AUTOMOBILE" WITH "MOTOR VEHICLE".

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-106.8, R.C.M. 1947, is amended to read as follows:

"**53-106.8. Free license plates to disabled veterans.** Any person who is a veteran of the armed service of the United States and permanently and totally disabled because of an injury which has been determined by the veterans administration to be service connected, and who is a citizen and resident of the state of Montana, and who is the owner of *a motor vehicle*, shall be provided with free license plates upon payment of personal property tax equal to one per cent (1%) of the taxable value for the *motor vehicle* upon proof of permanent and total service connected disability."

Approved March 7, 1975.

CHAPTER NO. 34

AN ACT TO AMEND SECTION 11-3524, R.C.M. 1947, TO ASSURE TENURE FOR FIREMEN UPON CONSOLIDATION OR DISINCORPORATION OF A CITY OR TOWN, CONTINUING THE BOARD OF TRUSTEES AS SET FORTH IN SECTIONS 11-1913 AND 11-1922, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3524, R.C.M. 1947, is amended to read as follows:

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"**11-3524. Firemen's tenure — firemen's disability and pension funds — how continued — protection of rights in.** Any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, *or other acts of consolidation or disincorporation,* shall have the same job tenure rights as though no such election and qualification had taken place. Any such fireman who has vested rights in any disability or pension fund shall maintain prior vested rights to such funds upon their transfer to a consolidated county municipality. Any disability or pension fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, *or other acts of consolidation or disincorporation,* shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act *or other acts of consolidation or disincorporation.* The board of trustees of such disability or pension fund shall *continue as set forth in sections 11-1913 and 11-1922, R.C.M. 1947.* Except as provided in this section, the disability or pension fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns."

Approved March 7, 1975.

CHAPTER NO. 35

AN ACT TO AMEND SECTION 59-1609, R.C.M. 1947, TO PROVIDE THAT THE GOVERNING BODY OF A POLITICAL SUBDIVISION SHALL REPRESENT THE PUBLIC EMPLOYER IN COLLECTIVE BARGAINING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1609, R.C.M. 1947, is amended to read as follows:

"**59-1609. Representative of public employer.** The chief executive officer of the state, *the governing body of a* political subdivision, *the* commissioner of higher education (whether elected or appointed) or *the* designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative."

Approved March 7, 1975.

CHAPTER NO. 36

AN ACT TO AMEND SECTION 59-1605, R.C.M. 1947, BY CHANGING

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AN INACCURATE SECTION REFERENCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1605, R.C.M. 1947, is amended to read as follows:

"**59-1605. Unfair labor practices of employer or labor organization.** (1) It is an unfair labor practice for a public employer to:

(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 59-1603 of this act;

(b) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under section *59-1613(4)*, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(c) discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; however, nothing in this act or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require that an employee who is not or does not become a union member shall be required as a condition of employment to have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(d) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act;

(e) refuse to bargain collectively in good faith with an exclusive representative.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right guaranteed in subsection (1) of section 59-1603 of this act, or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(b) refuse to bargain collectively in good faith with a public employer, if it has been designated as the exclusive representative of employees;

(c) use agency shop fees for contributions to political candidates or parties at state or local levels.

(3) For the purpose of this act, to bargain collectively is the performance of the mutual obligation of the public employer, or his designated representatives, and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to

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wages, hours, fringe benefits, and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(4) This act does not limit the authority of the legislature, any political subdivision or the governing body, relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment."

Section 2. This act is effective on passage and approval.

Approved March 7, 1975.

CHAPTER NO. 37

AN ACT REMOVING THE IMPOSITION OF SECRECY FROM CERTAIN INFORMATION SUBMITTED TO THE DEPARTMENT OF STATE LANDS UNDER THE ACT PROVIDING FOR RECLAMATION OF LANDS DISTURBED BY HARD ROCK MINING BY AMENDING SECTION 50-1221, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1221, R.C.M. 1947, is amended to read as follows:

"**50-1221. Information obtained from applications confidential — admissible in hearings or proceedings.** Any and all information obtained by the board or by the director or his staff by virtue of applications for *exploration licenses, and all information obtained from small miners,* is confidential between the board and the applicant, *except as to the name of the applicant and the county of proposed operation. Provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under a development or operating permit. It is further provided that any* information obtained by the board or by the director or his staff by virtue of *such* applications is properly admissible in any hearing conducted by the director, the board, appeals board or in any judicial proceeding to which the director and the applicant are parties *and is not confidential when a violation of the act or rules has been determined by the department or by judicial order.* Failure to comply with the secrecy provisions of this act shall be punishable by a fine of up to *one thousand dollars ($1,000).*"

Section 2. There is a new R.C.M. section numbered 50-1221.1 that reads as follows:

50-1221.1. Review of existing files. Existing departmental files shall be reviewed and their contents shall be segregated and available for public inspection to the same extent as new files under section 50-1221.

Section 3. There is a new R.C.M. section numbered 50-1221.2 that reads as follows:

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50-1221.2. Release by waiver. An applicant may release the board and department from the confidentiality requirements of this act by notarized waiver to that effect on forms to be provided by the department.

Approved March 14, 1975.

CHAPTER NO. 38

AN ACT TO PROVIDE FOR THE ORGANIZATION, OPERATION, AND SUPERVISION OF COOPERATIVE, NONPROFIT THRIFT AND CREDIT ASSOCIATIONS TO BE KNOWN AS CREDIT UNIONS AND TO DEFINE THEIR POWERS; AND REPEALING SECTIONS 14-130 THROUGH 14-158, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 14-601 that reads as follows:

14-601. Short title. This act shall be known and may be cited as the "Montana Credit Union Act".

Section 2. There is a new R.C.M. section numbered 14-602 that reads as follows:

14-602. Definition and purposes. A credit union is a cooperative, nonprofit association, incorporated under this act, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

Section 3. There is a new R.C.M. section numbered 14-603 that reads as follows:

14-603. Organization procedure. (1) Any seven (7) or more residents of this state, of legal age, who have a common bond defined in section 14-615, may organize a credit union and become charter members thereof by complying with this section.

(2) The subscribers shall execute in duplicate articles of incorporation, which conform to the applicable Montana corporation law, and agree to the terms thereof, which articles shall state:

(a) the name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this state, and the location where the proposed credit union is to have its principal place of business;

(b) that the existence of the credit union is perpetual;

(c) the par value of the shares of the credit union, which shall be in

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five dollar ($5) multiples of not less than five dollars ($5), nor more than twenty-five dollars ($25);

(d) that the credit union shall be organized under this act for the purposes set forth therein;

(e) the names and addresses of the subscribers to the articles of incorporation, and the value of shares subscribed to by each, which shall be not less than five dollars ($5); and

(f) that the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated, and those powers which are inherent in the credit union as a legal entity.

(3) The subscribers shall prepare and adopt bylaws for the general government of the credit union consistent with this act, and execute the same in duplicate.

(4) The subscribers shall select at least five (5) qualified persons who agree to serve on the board of directors, and at least three (3) qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the director of the department of business regulation.

(5) The subscribers shall forward the articles of incorporation and the bylaws to the director of the department of business regulation. The director may issue a certificate of approval, if the articles and the bylaws are in conformity with this act and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union. The application shall be acted upon within thirty (30) days. The articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation.

(6) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received.

Section 4. There is a new R.C.M. section numbered 14-604 that reads as follows:

14-604. Form of articles and bylaws. In order to simplify the organization of credit unions, the director of the department of business regulation shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this act, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

Section 5. There is a new R.C.M. section numbered 14-605 that reads as follows:

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14-605. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the director of the department of business regulation who shall approve or disapprove the amendments within sixty (60) days.

(2) Amendments shall become effective upon approval in writing by the director and no fee shall be charged for such approval.

Section 6. There is a new R.C.M. section numbered 14-606 that reads as follows:

14-606. Use of name exclusive. With the exception of a credit union organized under the provisions of this act or of any other credit union act, or an association of credit unions or a recognized chapter thereof, any person, corporation, copartnership or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be fined not more than five hundred dollars ($500) or imprisoned not more than one (1) year, or both, and may be permanently enjoined from using such words in its name.

Section 7. There is a new R.C.M. section numbered 14-607 that reads as follows:

14-607. Office facilities. (1) A credit union may change its place of business within this state upon written notice to the department of business regulation.

(2) A credit union may share office space with one (1) or more credit unions and contract with any person or corporation to provide facilities or personnel.

Section 8. There is a new R.C.M. section numbered 14-608 that reads as follows:

14-608. Fiscal year. The fiscal year of each credit union organized under this act shall end on December 31.

Section 9. There is a new R.C.M. section numbered 14-609 that reads as follows:

14-609. Director of the department of business regulation. (1) The director shall administer the laws of this state relating to credit unions. He may appoint or employ such special assistants, deputies, examiners, or other employees as are necessary for the purpose of administering or enforcing this act.

(2) The director may prescribe rules and regulations for the administration of this act and may establish chartering, supervisory and examination fees.

(3) The director shall, from time to time, issue rules and regulations prescribing the minimum amount of surety bond coverage and casualty, liability and fire insurance required of credit unions in relation to their assets or to the money and other personal property involved, or their exposure to risk.

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Section 10. There is a new R.C.M. section numbered 14-610 that reads as follows:

14-610. Reports. (1) Credit unions organized under this act shall report to the director annually on or before February 1 on forms supplied by him for that purpose. Additional reports may be required.

(2) A fine of five dollars ($5) for each day a report is in arrears shall be levied against the offending credit union unless it is excused for cause by the director.

Section 11. There is a new R.C.M. section numbered 14-611 that reads as follows:

14-611. Examinations. (1) The department of business regulation shall annually examine or cause to be examined each credit union. Each credit union and all of its officers and agents shall be required to give to representatives of the director of the department full access to all books, papers, securities, records and other sources of information under their control; and for the purpose of the examination the representatives may subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

(2) A report of the examination shall be forwarded to the executive officer of each credit union promptly after completion. The report shall contain comments relative to the management of the affairs of the credit union and also as to the general condition of its assets. Within sixty (60) days after the receipt of the report, the directors and committeemen shall meet to consider matters contained in the report.

(3) In lieu of making an annual examination of a credit union, the director may accept an audit report of the condition of the credit union made by an auditor approved by the director. The cost of the audit shall be borne by the credit union.

Section 12. There is a new R.C.M. section numbered 14-612 that reads as follows:

14-612. Records. (1) A credit union shall maintain all books, records, accounting systems and procedures in accordance with such rules as the director from time to time prescribes. In prescribing such rules, the director shall consider the relative size of a credit union and its reasonable capability of compliance.

(2) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the director.

(3) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union.

Section 13. There is a new R.C.M. section numbered 14-613 that reads as follows:

14-613. General powers. A credit union may:

(1) make contracts as provided for in this act;

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(2) sue and be sued;

(3) adopt and use a common seal and alter same;

(4) acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations;

(5) at the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;

(6) receive savings from its members in the form of shares or special purpose thrift accounts;

(7) lend its funds to its members as hereinafter provided;

(8) borrow from any source up to fifty percent (50%) of total assets, after deduction of the notes payable account;

(9) discount and sell any eligible obligations, subject to rules and regulations prescribed by the director;

(10) sell all or substantially all of its assets or purchase all or substantially all of the assets of another credit union, subject to the approval of the director;

(11) invest surplus funds as provided in this act;

(12) make deposits in legally chartered banks, savings banks, building and loan associations, savings and loan associations, trust companies and central type credit union organizations;

(13) assess charges to members in accordance with the bylaws for failure to meet promptly their obligations to the credit union;

(14) hold membership in other credit unions organized under this act or other acts, and in other associations and organizations composed of credit unions;

(15) declare dividends and pay interest refunds to borrowers as provided in this act;

(16) collect, receive and disburse monies in connection with the sale of negotiable checks, money orders and other money type instruments, and for such other purposes as may provide benefit or convenience to its members, and charge a reasonable fee for such services, but not including checking account services;

(17) perform such tasks and missions as are requested by the federal government or this state or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with this act;

(18) contribute to, support or participate in any nonprofit service facility whose services will benefit the credit union or its membership, subject to such regulations as are prescribed by the director;

(19) make donations or contributions to any civic, charitable or com-

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munity organizations as authorized by the board of directors, subject to regulations as are prescribed by the director; or

(20) purchase or make available insurance for its directors, officers, agents, employees and members.

Section 14. There is a new R.C.M. section numbered 14-614 that reads as follows:

14-614. Incidental powers. A credit union may exercise such incidental powers as are granted corporations organized under the laws of this state including those that are necessary to enable it to promote and carry on most effectively its purposes.

Section 15. There is a new R.C.M. section numbered 14-615 that reads as follows:

14-615. Membership defined. (1) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid the required entrance fee or membership fee, or both, have subscribed for one (1) or more shares, and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(2) Credit union membership may include groups having a common bond of similar occupation, association or interest provided, that mere residence in a community may not establish a common bond of association or interest, or to employees of a common employer, and members of the immediate family of such persons.

Section 16. There is a new R.C.M. section numbered 14-616 that reads as follows:

14-616. Societies — associations. Societies, and copartnerships composed primarily of individuals who are eligible for membership, and corporations whose stockholders are composed primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals, but may not borrow in excess of their shareholdings.

Section 17. There is a new R.C.M. section numbered 14-617 that reads as follows:

14-617. Other credit unions. Any credit union organized under this act may permit membership of any other credit union organized under this act or other acts.

Section 18. There is a new R.C.M. section numbered 14-618 that reads as follows:

14-618. Limited income persons. Existing credit unions may include within their field of membership limited income persons as defined by the director of the department of business regulation for whom credit union services are otherwise unavailable.

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Section 19. There is a new R.C.M. section numbered 14-619 that reads as follows:

14-619. Members who leave field. Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors.

Section 20. There is a new R.C.M. section numbered 14-620 that reads as follows:

14-620. Liability of members. The members of the credit union shall not be personally or individually liable for the payment of its debts.

Section 21. There is a new R.C.M. section numbered 14-621 that reads as follows:

14-621. Meetings of members. (1) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(2) At all such meetings a member shall have but one (1) vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(3) A society, association, copartnership or corporation, having membership in the credit union, may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(4) The board of directors may establish a minimum age, not greater than eighteen (18) years of age, as a qualification of eligibility to vote at meetings of the members, or to hold office, or both.

Section 22. There is a new R.C.M. section numbered 14-622 that reads as follows:

14-622. Election or appointment of officials. (1) The credit union shall be directed by a board consisting of an odd number of directors, at least five (5) in number, to be elected at the annual membership meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(2) The board of directors shall appoint a supervisory committee of not less than three (3) members at the organization meeting and within thirty (30) days following each annual meeting of the members for such terms as the bylaws provide.

(3) The board of directors shall appoint a credit committee consisting of an odd number, not less than three (3), for such terms as the bylaws provide, or in lieu of a credit committee, a credit manager.

Section 23. There is a new R.C.M. section numbered 14-623 that reads as follows:

14-623. Record of board and committee members. Within fifteen (15) days after election or appointment, a record of the names and addresses of the members of the board, committees and all officers of the

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credit union shall be filed with the department of business regulation on forms provided by the department.

Section 24. There is a new R.C.M. section numbered 14-624 that reads as follows:

14-624. Vacancies. The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees.

Section 25. There is a new R.C.M. section numbered 14-625 that reads as follows:

14-625. Compensation of officials. No officer, director, or committee member, other than the treasurer, a credit manager, or a loan officer may be compensated for his service as such, but reasonable life, health, accident and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business.

Section 26. There is a new R.C.M. section numbered 14-626 that reads as follows:

14-626. Conflicts of interest. No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested.

Section 27. There is a new R.C.M. section numbered 14-627 that reads as follows:

14-627. Executive officers. (1) At their organization meeting and within fifteen (15) days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice chairman of the board or one (1) or more vice presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the corporation.

(2) The terms of the officers shall be one (1) year, or until their successors are chosen and have duly qualified.

(3) The duties of the officers shall be prescribed in the bylaws.

(4) The board of directors may employ an officer in charge of operations whose title shall be either president and/or general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

Section 28. There is a new R.C.M. section numbered 14-628 that reads as follows:

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14-628. Authority of directors. The board of directors shall have the general direction of the business affairs, funds, and records of the credit union.

Section 29. There is a new R.C.M. section numbered 14-629 that reads as follows:

14-629. Executive committee. From the persons elected to the board, the board may appoint an executive committee of not less than three (3) directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board.

Section 30. There is a new R.C.M. section numbered 14-630 that reads as follows:

14-630. Meetings of directors. The board of directors and the executive committee shall meet as often as necessary, but one body must meet at least monthly and the other at least quarterly.

Section 31. There is a new R.C.M. section numbered 14-631 that reads as follows:

14-631. Duties of directors. It shall be the duty of the directors to:

(1) act upon applications for membership; or to appoint one (1) or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board;

(2) purchase a blanket fidelity bond, in accordance with any rules and regulations of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, attorney at law, or other agent;

(3) determine from time to time the interest rate or rates consistent with this act, which shall be charged on loans and to authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form as provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

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(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers and auditing assistants requested by the supervisory committee; and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees deemed necessary; and

(14) perform such other duties as the members from time to time direct, and perform or authorize any action not inconsistent with this act and not specifically reserved by the bylaws for the members.

Section 32. There is a new R.C.M. section numbered 14-632 that reads as follows:

14-632. Authority of credit committee. The credit committee shall have the general supervision of all loans to members.

Section 33. There is a new R.C.M. section numbered 14-633 that reads as follows:

14-633. Meeting of credit committee. The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered.

Section 34. There is a new R.C.M. section numbered 14-634 that reads as follows:

14-634. Loan officers. (1) The credit committee may appoint one (1) or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(2) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee.

Section 35. There is a new R.C.M. section numbered 14-635 that reads as follows:

14-635. Credit manager. The credit committee may be dispensed with, and a credit manager empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in sections 14-632, 14-633 and 14-634 do not apply, and no loans shall be made unless approved by the credit manager, except the credit manager may appoint

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one (1) or more loan officers with the power to approve loans, subject to such limitations or conditions as he prescribes.

Section 36. There is a new R.C.M. section numbered 14-636 that reads as follows:

14-636. Duties of supervisory committee. (1) The supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union and shall submit a report of that audit to the board of directors and a summary of that report to the members at the next annual meeting of the credit union. It shall make or cause to be made such supplementary audits or examinations as it deems necessary or as are required by the director or by the board of directors, and submit reports of these supplementary audits to the board of directors.

(2) The supervisory committee shall cause the accounts of the members to be verified with the records of the credit union from time to time, and not less frequently than every two (2) years.

Section 37. There is a new R.C.M. section numbered 14-637 that reads as follows:

14-637. Suspension and removal of officials. (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.

(2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than seven (7) nor more than twenty-one (21) days after such suspension. At such meeting the suspension shall be acted upon by the members.

(3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this act, the articles of incorporation, or the bylaws.

Section 38. There is a new R.C.M. section numbered 14-638 that reads as follows:

14-638. Calling of special meeting. The supervisory committee by a majority vote may call a special meeting of the members to consider any violation of this act, the credit union's charter or bylaws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized.

Section 39. There is a new R.C.M. section numbered 14-639 that reads as follows:

14-639. Shares. (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for and transferred in such manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

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Section 40. There is a new R.C.M. section numbered 14-640 that reads as follows:

14-640. Dividends. (1) At such intervals and for such periods as the board of directors may authorize, and after provision for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at such rates and upon such classes of shares as are determined by the board. Such dividends shall be paid on all paid up shares outstanding at the close of the period for which the dividend is declared.

(2) Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportionate share of such dividend.

(3) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first fifteen (15) days of that month.

Section 41. There is a new R.C.M. section numbered 14-641 that reads as follows:

14-641. Thrift accounts. Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors.

Section 42. There is a new R.C.M. section numbered 14-642 that reads as follows:

14-642. Minors' accounts. Shares may be issued to a minor who may withdraw the shares including the dividends and interest thereon. Share payments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

Section 43. There is a new R.C.M. section numbered 14-643 that reads as follows:

14-643. Joint accounts. (1) A member may designate any person or persons to hold shares and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

Section 44. There is a new R.C.M. section numbered 14-644 that reads as follows:

14-644. Trust accounts. (1) Shares may be issued in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless a member in his own right, shall be permitted to vote, obtain loans, hold office or be required to pay an entrance or membership fee.

(2) Payment of part or all of such shares to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of such payment.

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(3) In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written notice of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary.

Section 45. There is a new R.C.M. section numbered 14-645 that reads as follows:

14-645. Liens. The credit union shall have a lien on the shares and accumulated dividends or interest of a member in his individual, joint or trust account, for any sum past due the credit union from said member or for any loan endorsed by him.

Section 46. There is a new R.C.M. section numbered 14-646 that reads as follows:

14-646. Dormant accounts. (1) If a credit union is unable to contact a member, beneficiary or other person via first class mail at the last address shown on the records of the credit union, and if such inability continues for a period of more than five (5) years, all shares, accounts, dividends, interest and other sums due or standing in the name of such member, beneficiary or other person may, by action of the board of directors, be segregated, and thereafter no dividends or interest will accrue thereto.

(2) The member may reclaim any such sums by proper administrative or judicial proceedings or in accordance with the Uniform Disposition of Unclaimed Property Act.

(3) This section does not apply to shares, accounts, dividends, interest and other sums due to or standing in the name of two (2) or more persons unless the credit union is unable to contact any such persons in the manner and during the period specified in subsection (1).

Section 47. There is a new R.C.M. section numbered 14-647 that reads as follows:

14-647. Reduction in shares. (1) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the entire membership order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(2) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction.

Section 48. There is a new R.C.M. section numbered 14-648 that reads as follows:

14-648. Purposes, terms, and interest rate. A credit union may loan to members for such purpose and upon such security and terms as the credit committee, credit manager, or loan officer approves, at rates of

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interest not exceeding one one-quarter percent (1 ¼%) per month on the unpaid monthly balances.

Section 49. There is a new R.C.M. section numbered 14-649 that reads as follows:

14-649. Application. Every application for a loan shall be made in writing upon a form, which the credit committee, credit manager, or loan officer prescribes. The application shall state the purpose for which the loan is desired, and the security, if any, offered. Each loan shall be evidenced by a written document.

Section 50. There is a new R.C.M. section numbered 14-650 that reads as follows:

14-650. Loan limit. No loan shall be made to any member in an aggregate amount in excess of ten percent (10%) of the credit union's total assets.

Section 51. There is a new R.C.M. section numbered 14-651 that reads as follows:

14-651. Security. In addition to generally accepted types ofuecurity, the endorsement of a note by a surety, comaker or guarantor, or assignment of shares of wages, in a manner consistent with the laws of this state, shall be deemed security within the meaning of this act. The adequacy of any security shall be determined by the credit committee, credit manager, or loan officer, subject to this act and the bylaws.

Section 52. There is a new R.C.M. section numbered 14-652 that reads as follows:

14-652. Installments. A member may receive a loan in installments, or in one sum, and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business.

Section 53. There is a new R.C.M. section numbered 14-653 that reads as follows:

14-653. Line of credit. The credit committee or credit manager may approve in advance upon their own motion or upon application by a member, a line of credit, and advances may be granted to each member within the limit of such extension of credit. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such extension of credit.

Section 54. There is a new R.C.M. section numbered 14-654 that reads as follows:

14-654. Other loan programs. (1) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(2) A credit union may participate in guaranteed loan programs of the federal and state government.

(3) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members.

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Section 55. There is a new R.C.M. section numbered 14-655 that reads as follows:

14-655. Loans to officials. (1) A credit union may make loans to its directors, employees, loan officers, credit manager, and to members of its supervisory and credit committees, provided that:

(a) the loan complies with all lawful requirements under this act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) any such loan or aggregate of loans to any one director or committee member which exceeds two thousand five hundred dollars ($2,500) plus pledged shares must be reported to the board of directors. Loans to directors and committee members may not exceed an aggregate of twenty percent (20%) of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, credit manager, and members of its supervisory and credit committees to act as comakers, guarantors or endorsers of loans to other members, except when any such loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor or endorser exceeds two thousand five hundred dollars ($2,500), approval of the board of directors is required.

Section 56. There is a new R.C.M. section numbered 14-656 that reads as follows:

14-656. Insurance for members. (1) A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, or loan balances, or to any combination of them.

Section 57. There is a new R.C.M. section numbered 14-657 that reads as follows:

14-657. Liability insurance for officers. A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

Section 58. There is a new R.C.M. section numbered 14-658 that reads as follows:

14-658. Share insurance. (1) Not later than January 1, 1976, each credit union shall apply for insurance on share accounts under the provisions of Title II of the National Credit Union Act. A credit union which has been denied a commitment for insurance of its share accounts shall either dissolve, merge with another credit union which is insured under Title II of the National Credit Union Act, or apply in writing within thirty (30) days of denial to the director of the department of business regulation for additional time to obtain an insurance commitment.

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(2) The director of the department of business regulation shall grant additional time for the credit union to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Additional time or times shall not extend later than January 1, 1978.

(3) The director of the department of business regulation shall make available reports of condition and examination reports to the administrator of the National Credit Union Administration and may accept any report of examination made on behalf of such administrators. The director may appoint the administrator of the National Credit Union Administration as liquidating agent of an insured credit union.

Section 59. There is a new R.C.M. section numbered 14-659 that reads as follows:

14-659. Investment of funds. Funds not used in loans to members may be invested:

(1) in securities, obligations or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America, or any agency thereof, or in any trust or trusts established for investing directly or collectively in the same;

(2) in general obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by congress, or any political subdivisions thereof;

(3) in certificates of deposit or passbook type accounts issued by a state or national bank, mutual savings bank, building and loan association, or savings and loan association;

(4) in loans to or in shares or deposits of other credit unions;

(5) in the capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are primarily confined or restricted to credit unions, or organizations of credit unions, and provided the purposes for which such agency or association is organized are designed primarily to service or otherwise assist credit union operations;

(6) in shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding ten percent (10%) of the shares and surplus of the credit union;

(7) in loans to any credit union association or corporation, national or state, of which the credit union is a member, except that such investments shall be limited to two percent (2%) of the assets of the credit union.

Section 60. There is a new R.C.M. section numbered 14-660 that reads as follows:

14-660. Transfers to regular reserve. (1) Immediately before the

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payment of each dividend, the gross earnings of the credit union shall be determined. From this amount, there shall be set aside sums as a regular reserve for contingencies in accordance with the following schedule:

(a) ten percent (10%) of gross income until the regular reserve equals five percent (5%) of the total of outstanding loans and risk assets; then

(b) seven percent (7%) of gross income until the regular reserve equals six percent (6%) of the total of outstanding loans and risk assets; then

(c) five percent (5%) of gross income until the regular reserve equals seven percent (7%) of the total of outstanding loans and risk assets.

(2) Whenever the regular reserve falls below seven percent (7%), six percent (6%), or five percent (5%) of the total outstanding loans and risk assets, as the case may be, it shall be replenished by regular contributions in such amounts as are needed to maintain the reserve goals of five percent (5%), six percent (6%), or seven percent (7%).

(3) Any entrance fees, charges and transfer fees shall, after payment of organization expense, be added to the regular reserve.

Section 61. There is a new R.C.M. section numbered 14-661 that reads as follows:

14-661. Use of regular reserve. The regular reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the director of the department of business regulation.

Section 62. There is a new R.C.M. section numbered 14-662 that reads as follows:

14-662. Risk assets defined. For the purpose of establishing the reserves required, all assets except the following shall be considered risk assets:

(1) cash on hand;

(2) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(3) assets which are insured, fully guaranteed as to principal and interest, or due from the United States government, its agencies, the federal national mortgage association, or the government national mortgage association;

(4) loans to other credit unions;

(5) loans to students insured under the provision of Title IV, part B of the Higher Education Act of 1965, or similar state insurance programs;

(6) loans insured under Title I of the National Housing Act by the federal housing administration;

(7) shares in central credit unions organized under this act or of any other state act or of the Federal Credit Union Act;

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(8) common trust investments which deal in investments authorized by this act;

(9) prepaid expenses;

(10) accrued interest on nonrisk investments;

(11) furniture and equipment; and

(12) land and buildings.

Section 63. There is a new R.C.M. section numbered 14-663 that reads as follows:

14-663. Special reserves. In addition to such regular reserve, special reserves to protect the interest of members shall be established:

(1) when required by regulation; or

(2) when found by the board of directors of the credit union or by the director of the department of business regulation, in any special case, to be necessary for that purpose.

Section 64. There is a new R.C.M. section numbered 14-664 that reads as follows:

14-664. Suspension. (1) If it appears that any credit union is bankrupt or insolvent, or that it has willfully violated this act, or is operating in an unsafe or unsound manner, the director of the department of business regulation shall issue an order temporarily suspending the credit union's operations for not less than thirty (30) nor more than sixty (60) days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, and/or a list of the specific violations of this act.

(2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the director. The credit union shall then file with the director a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the director may revoke the suspension notice and permit the credit union to resume normal operations.

(4) If the director, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the director may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union.

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Section 65. There is a new R.C.M. section numbered 14-665 that reads as follows:

14-665. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

(3) Within ten (10) days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of business regulation thereof in writing, setting forth the reasons for the proposed action. Within ten (10) days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds (⅔) majority of the members present at a regular or special meeting of the members is required. Where authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten (10) days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors of the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this act.

Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

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(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, they shall execute a certificate of dissolution on a form prescribed by the department of business regulation and file the same, together with all pertinent books and records of the liquidating credit union, with the department of business regulation whereupon such credit union shall be dissolved.

Section 66. There is a new R.C.M. section numbered 14-666 that reads as follows:

14-666. Merger. (1) Any credit union may with the approval of the director of the department of business regulation, and compliance with the applicable Montana corporation law, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such purpose.

(2) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:

(a) the time and place of the meeting of the board of directors at which the plan was agreed upon;

(b) the vote in favor of the adoption of the plan;

(c) a copy of the resolution or other action by which the plan was agreed upon;

(d) the time and place of the meeting of the members at which the plan agreed upon was approved; and

(e) the vote by which the plan was approved by the members.

(3) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the director, certified by him, and returned to both credit unions within thirty (30) days.

(4) Upon return of the certificate from the director, all property rights, and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.

(5) This section shall be construed whenever possible to permit a credit union chartered under any other act to merge with one chartered under this act, or to permit one chartered under this act to merge with one chartered under any other act.

Section 67. There is a new R.C.M. section numbered 14-667 that reads as follows:

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14-667. Conversion of charter. (1) A credit union chartered under the laws of this state may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the director of the department of business regulation.

(2) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the director of the department of business regulation and file proof of such compliance with said director.

Section 68. There is a new R.C.M. section numbered 14-668 that reads as follows:

14-668. Organization. Any central credit union may be organized and operated under this act and subject to all such provisions not inconsistent with this article. Such credit union shall use the term "central" in its official name.

Section 69. There is a new R.C.M. section numbered 14-669 that reads as follows:

14-669. Membership. Membership in such central credit union may include, but not be limited to:

(1) credit unions organized and operating under this act or under any other credit union act;

(2) officers, directors, committee members and employees of such credit unions; officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state;

(3) organizations and associations of those persons or organizations enumerated in subsections (1) and (2);

(4) employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union;

(5) persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; or

(6) members of the immediate families of all members qualified above.

Section 70. There is a new R.C.M. section numbered 14-670 that reads as follows:

14-670. Voting representative. Each credit union becoming a member of such central credit union may designate one (1) person to be its voting representative in the central credit union, which person shall be designated by the board of directors of the member credit union. Such voting representative shall be eligible to hold office in the central credit union as if such person were himself a member of the central credit union.

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Section 71. There is a new R.C.M. section numbered 14-671 that reads as follows:

14-671. Additional rights and powers. (1) A central credit union shall have all of the rights and powers of any other credit union organized under this act and the additional rights and power specified in this section, notwithstanding any limitations or restrictions found elsewhere in this act.

(2) A central credit union may make loans to other credit unions; purchase shares of other credit unions; and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow and accept money from any source, and issue notes or debentures.

Section 72. There is a new R.C.M. section numbered 14-672 that reads as follows:

14-672. Taxation. All credit unions organized under this or any other credit union act shall have the same immunity from state and local taxation that federal credit unions have from time to time under the laws of the United States.

Section 73. There is a new R.C.M. section numbered 14-673 that reads as follows:

14-673. Stock transfer taxes. The shares of any credit union shall not be subject to stock transfer taxes, either when issued or when transferred from one member to another.

Section 74. There is a new R.C.M. section numbered 14-674 that reads as follows:

14-674. Participation in government programs. The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

Section 75. There is a new R.C.M. section numbered 14-675 that reads as follows:

14-675. Instruction in schools. With the consent and under the direction of the state superintendent of public instruction, the organization, management, and extension of credit unions as set forth in this act may be taught in the public schools of this state.

Section 76. There is a new R.C.M. section numbered 14-676 that reads as follows:

14-676. Additional powers of director. The director may authorize any credit union to engage in any activity in which such credit union could engage were it operating as a federal chartered credit union at the time

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such authority is granted. Such powers shall include but not by way of limitation, the power to do any act, and own, possess and carry as assets, property of such character including stocks, bonds or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit union not having a common bond of membership as defined in section 15 of this act. Upon receipt of a written request from any state chartered credit union, the director shall exercise such power by the issuance of a special order therefor if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this state.

Section 77. There is a new R.C.M. section numbered 14-677 that reads as follows:

14-677. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 78. Sections 14-130 through 14-158, R.C.M. 1947, are repealed.

Approved March 14, 1975.

CHAPTER NO. 39

AN ACT TO REQUIRE CITIES OF THE FIRST AND SECOND CLASS TO PAY FULL PREMIUM FOR INSURANCE PROVIDED UNDER SECTION 11-1024, R.C.M. 1947, TO FIREFIGHTERS IN THE RESPECTIVE CITIES, AND TO PROVIDE AUTHORITY TO RAISE THE LOCAL MILL LEVY IF NECESSARY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1024.1 that reads as follows:

11-1024.1. Group insurance for firemen — payment of premium. Cities of the first and second class, if they provide insurance for other city employees under section 11-1024 shall:

(a) provide the same insurance to their respective firefighters;

(b) pay the full premium of each firefighter's insurance coverage for the firefighter and his dependents notwithstanding the provisions of section 11-1024.

Section 2. There is a new R.C.M. section numbered 11-1024.2 that reads as follows:

11-1024.2. Special funding. Those incorporated cities and towns which require additional funds to finance the provisions of this act may levy on property by the amount required to meet these provisions, a tax not to exceed two (2) mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied.

Approved March 14, 1975.

CHAPTER NO. 40

AN ACT TO PROHIBIT THE EMPLOYMENT OF PROFESSIONAL STRIKEBREAKERS IN A LABOR DISPUTE AND TO LIMIT THE RIGHT TO RECRUIT EMPLOYEES TO REPLACE EMPLOYEES INVOLVED IN A LABOR DISPUTE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 41-2501 that reads as follows:

41-2501. Recruitment by third parties. No person, partnership, firm, or officer or agent thereof, may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

Section 2. There is a new R.C.M. section numbered 41-2502 that reads as follows:

41-2502. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state of Montana.

Section 3. There is a new R.C.M. section numbered 41-2503 that reads as follows:

41-2503. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

Section 4. There is a new R.C.M. section numbered 41-2504 that reads as follows:

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41-2504. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees, or refer persons to employment, in place of employees involved in a labor dispute, without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

Section 5. There is a new R.C.M. section numbered 41-2505 that reads as follows:

41-2505. Penalties. A person convicted of violating sections 41-2501, 41-2502, or 41-2503 shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000) or by imprisonment for not less than one (1) nor more than two (2) years. A person convicted of violating section 41-2504 shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisonment for not more than thirty (30) days.

Section 6. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 14, 1975.

CHAPTER NO. 41

AN ACT INCREASING FROM TWO DOLLARS TO THREE DOLLARS THE AMOUNT CHARGED FOR THE ISSUANCE OF AN ORIGINAL CERTIFICATE OF OWNERSHIP OF TITLE AND FOR A TRANSFER OF REGISTRATION; PROVIDING THAT THE AMOUNT REMITTED TO THE REGISTRAR OF MOTOR VEHICLES BY THE COUNTY TREASURER BE INCREASED FROM ONE DOLLAR TO TWO DOLLARS; PROVIDING AN ADDITIONAL FEE FOR REGISTRATION OF FIFTY CENTS ($.50) PER YEAR; PROVIDING THAT MONIES APPROPRIATED FROM THE GENERAL FUND FOR REGISTRATION PURPOSES SHALL BE REIMBURSED FROM THE MOTOR VEHICLE ACCOUNT; AND AMENDING SECTIONS 53-106 AND 53-112, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-106, R.C.M. 1947, is amended to read as follows:

"53-106. Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners

of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued every other year, provided that number plates will next be issued in the year 1973 and in alternate years thereafter, shall bear a distinctive marking, and shall be furnished by the state. In alternate years the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. An additional fee of *one dollar ($1.00)* per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar

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of motor vehicles at such time when the physical condition of numbered plates require same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrailers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57."

Section 2. Section 53-112, R.C.M. 1947, is amended to read as follows:

"53-112. Fee for original certificate of ownership and transfer of title. A charge of *three dollars ($3.00)* shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) *Two dollars ($2.00)* of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to:

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(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns."

Section 3. There is a new R.C.M. section numbered 53-122.1 that reads as follows:

53-122.1. General fund reimbursement. Any monies appropriated from the general fund for the operation of the registrar of motor vehicles or for the manufacture of number plates shall be reimbursed to the general fund from the motor vehicle account, earmarked revenue fund, if there are monies in the account above the amount required for the normal operation of the registrar of motor vehicles.

Approved March 14, 1975.

CHAPTER NO. 42

AN ACT TO AMEND SECTION 66-3330, R.C.M. 1947, TO PROVIDE FOR AN EARMARKED REVENUE FUND FOR PRIVATE INVESTIGATORS AND TO PROVIDE FOR THE PURPOSE FOR WHICH FUNDS MAY BE EXPENDED BY THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-3330, R.C.M. 1947, is amended to read as follows:

"66-3330. Fee schedule — earmarked revenue fund — purpose for which funds may be expended. *(1)* The amount of fees prescribed by this act, unless otherwise fixed, is that fixed in the following schedule:

(a) An application for an original license in any classification shall be accompanied by an investigation fee of twenty-five dollars ($25).

(b) The annual fee for an original license or renewal thereof shall be fixed by the director but shall not exceed fifty dollars ($50).

(2) Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter."

Approved March 17, 1975.

CHAPTER NO. 43

AN ACT AMENDING SECTION 92-706.1, R.C.M. 1947, RELATING TO

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MEDICAL BENEFITS UNDER THE WORKMEN'S COMPENSATION ACT, BY ADDING A PROVISION REQUIRING THE EMPLOYER OR INSURER TO REPAIR OR REPLACE DAMAGED OR LOST PRESCRIPTION EYEGLASSES, PRESCRIPTION CONTACT LENSES, PRESCRIPTION HEARING AIDS, AND DENTURES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-706.1, R.C.M. 1947, is amended to read as follows:

"**92-706.1. Medical and hospital services approved by the division are furnished.** *(1)* In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) During the first thirty-six (36) months after the happening of the injury, the employer or insurer shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained. The division, upon application of the injured workman may, for good cause, grant reasonable extensions of the benefits provided in this section.

(b) The employer or insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in section 92-418, arising out of and in the course of employment.

(2) All hospitals must submit to the division of workmen's compensation, a schedule of fees and charges for treatment of injured workmen to be in effect for at least a twelve (12) month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least thirty (30) days prior to its effective date and shall not exceed the charges prevailing in the hospital for similar treatment of private patients."

Approved March 17, 1975.

CHAPTER NO. 44

AN ACT AMENDING SECTION 92-411, R.C.M. 1947, BY CHANGING THE SALARY UPON WHICH PREMIUMS ARE COLLECTED FOR SOLE PROPRIETORS AND PARTNERS UNDER THE WORKMEN'S COMPENSATION ACT, AND PROVIDING THAT THE SALARY SHALL ALSO BE USED FOR THE DETERMINATION OF COMPENSATION BENEFITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-411, R.C.M. 1947, is amended to read as follows:

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"**92-411. Employee and workman defined.** *(1)* "Employee" and "workman" are used synonymously and mean every person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, including city and town firemen, highway patrolmen, police officers, county sheriffs, deputy sheriffs, constables, truant officers and all peace officers, also all public officers and their deputies, assistants and employees, but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer, unless such employer has elected to be bound by the provisions of the compensation law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service.

(2) "Employee" also means a recipient of general relief who is performing work for a county of this state under the provisions of section 71-307, any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program, and any person receiving vocational rehabilitation training, or other on-the-job training under any state or federal vocational training program, whether or not under any appointment or contract of hire with an "employer" as defined in this title, and whether or not receiving payment from a third party.

(3) If the employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within the provisions of this act, any member of such partnership, or the owner of the sole proprietorship, devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurance carrier and the *division* written notice naming the partners or sole *proprietor* to be covered, and no partner or sole proprietor shall be deemed an employee within this act until such notice has been given. For premium rate making, *and for the determination of weekly wage for weekly compensation benefits,* the insurance carrier shall assume *a* salary or wage of such electing "employee" to be *nine* hundred dollars *($900)* per month."

Approved March 17, 1975.

CHAPTER NO. 45

AN ACT TO AMEND SECTION 26-507, R.C.M. 1947, PROHIBITING THE RESALE OR COMMERCIAL USE OF CONFISCATED FISH AND GAME BY PURCHASERS.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 26-507, R.C.M. 1947, is amended to read as follows:

"**26-507. Certificate of sale.** Upon the sale of such property, the officer shall issue a certificate to the party purchasing the same, certifying that the purchaser has the legal right to be in possession of the same, and anyone so acquiring said property from the state *is prohibited from reselling such property and from using the same for any commercial purpose. During an auction only one carcass of either deer, moose, or elk shall be purchased per person. At their discretion, the fish and game department may donate unsold carcasses to welfare departments, public institutions, or charitable institutions.*"

Approved March 17, 1975.

CHAPTER NO. 46

AN ACT AMENDING SECTION 92-413, R.C.M. 1947, OF THE WORKMEN'S COMPENSATION ACT BY CHANGING THE AGE FOR BENEFICIARIES WHO ARE FULL TIME STUDENTS IN ACCREDITED SCHOOLS FROM 22 YEARS TO 25 YEARS SO THAT THE MONTANA DEATH BENEFITS FOR WORKMEN'S COMPENSATION COMPLIES COMPLETELY WITH THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-413, R.C.M. 1947, is amended to read as follows:

"**92-413. Beneficiary defined.** "Beneficiary" means:

(1) a surviving wife or husband;

(2) an unmarried child under the age of eighteen (18) years;

(3) an unmarried child under the age of *twenty-five (25)* years who is a full-time student in an accredited school;

(4) an invalid child over the age of eighteen (18) years who is dependent upon the decedent for support at the time of injury;

(5) a parent who is dependent upon the decedent for support at the time of the injury. However, such a parent is a beneficiary only when no beneficiary, as defined in subsections (1) through (4) of this section, exists; and

(6) a brother or sister under the age of eighteen (18) years if dependent upon the decedent for support at the time of the injury. However, such a brother or sister is a beneficiary only until the age of eighteen (18) years and only when no beneficiary, as defined in subsections (1) through (5) of this section, exists."

Approved March 17, 1975.

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CHAPTER NO. 47

AN ACT REVISING THE PROVISIONS CONCERNING USE OF DISABILITY AND PENSION FUNDS OF THE FIRE DEPARTMENT RELIEF ASSOCIATION, BY AMENDING SECTIONS 11-1926 AND 11-1928, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1926, R.C.M. 1947, is amended to read as follows:

"**11-1926. Disability pension.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury in an amount which shall be equal to one-half (½) of the sum last received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of said fire department. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In no event shall the monthly compensation paid to a member retiring prior to July 1, 1974 be less than two hundred dollars ($200). In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five ($75) dollars per month."

Section 2. Section 11-1928, R.C.M. 1947, is amended to read as follows:

"**11-1928. Use of disability and pension fund of fire department relief association.** Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. A pension to a member who has become permanently maimed or disabled.

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3. A benefit or allowance to a member who has suffered a permanent disabling injury.

4. A benefit or allowance to a member who has contracted a permanent disabling sickness.

5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of seven hundred fifty dollars ($750).

6. Payment to the widow, orphan or orphans of a deceased member as provided by law.

7. The payment of premiums upon a blanket policy of insurance covering the members of such fire department and providing for payment of compensation in case of death or injury to such member or any of them.

8. The return of employee contribution as provided by law.

9. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund."

Approved March 17, 1975.

CHAPTER NO. 48

AN ACT AMENDING SECTION 11-2023, R.C.M. 1947, TO DELETE THE LANGUAGE THAT PROHIBITS A RETIRED VOLUNTEER FIREMAN FROM RECEIVING BENEFITS FROM A RETIREMENT SYSTEM OTHER THAN THE VOLUNTEER FIREMEN'S PENSION FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2023, R.C.M. 1947, is amended to read as follows:

"**11-2023. Qualification for compensation.** (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) Years of service. (I) To qualify for full participation he must have completed a total of at least twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincor-

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porated area, town or village. (II) If prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire company, or by personal relocation due to transfer or loss of employment, or by personal disability, or by other factor beyond his reasonable control, then he may qualify for partial participation if he has completed at least ten (10) years' service; in that event, he shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20). (III) Provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars ($2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9) or ten (10) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age);

(C) During each of the years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company;

(D) He must have ceased to be an active member of any volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village, and if he applies for and receives pension benefits hereunder, he shall not thereafter be eligible to become an active member of any such volunteer fire company;

(E) Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the

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volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall on or before September 1, 1968, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled."

Approved March 17, 1975.

CHAPTER NO. 49

AN ACT TO PERMIT PHYSICALLY AND MENTALLY HANDICAPPED PERSONS TO ACQUIRE A FISHING LICENSE; AMENDING SECTION 26-202.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. Licenses — fees — classifications of licenses — fees and powers under licenses. (1) Class A License—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dollars ($5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department

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may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5 Elk Tag three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars ($20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1 (2) (a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game

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commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars ($10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

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In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) Disabled persons are entitled to fish without a license, if they are residents of Montana not residing in an institution and are certified as disabled by a licensed medical doctor, licensed to practice medicine in Montana.

Disability is defined as a physical or mental condition that prevents a person from doing any substantial gainful work that is expected to last for the rest of their life.

Such disabled persons shall carry a permit on a form prescribed by the commission.

(d) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(e) If a person is convicted of a violation of the fish and game laws

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or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(f) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(g) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(h) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.

(17) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(18) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission."

Approved March 17, 1975.

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CHAPTER NO. 50

AN ACT PROVIDING A DEFINITION FOR A CUSTOM COMBINE UNIT; SPECIFYING OVERHEIGHT PERMITS; PROVIDING IDENTIFYING DEVICES; PROVIDING A CRIMINAL PENALTY FOR VIOLATION; AND AMENDING SECTION 84-6015, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-6015, R.C.M. 1947, is amended to read as follows:

"**84-6015. Custom combiner's tax — collection — distribution — not transferable.** (1) In lieu of the taxes required by section 84-6008, R.C.M. 1947, motor vehicle license fees, Title 53, R.C.M. 1947, gross vehicle weight fees, over-width *and overheight* permits, Title 32, R.C.M. 1947, a nonresident engaged in the business of custom combining who brings equipment into the state of Montana shall pay a *fee* of forty dollars ($40) per unit for a period beginning July 1 and ending October 31. A unit shall *include*:

(a) one (1) truck suitable for hauling grain,

(b) one (1) header trailer or one (1) combine trailer, and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) The *fee* required by this section shall be collected by the department of highways. Upon payment of the *fee* the department of highways shall provide *an identifying device* to be displayed on each truck, header trailer or combine trailer and other equipment used by the nonresident in his business of custom combining in the state of Montana, which *device* shall be valid for a period beginning July 1 and ending October 31.

(3) All *fees* collected under this section shall be distributed not later than December 1 immediately following the period of license as follows: sixty-two and one-half percent (62-½%) to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, thirty-seven and one-half percent (37-½%) to the earmarked revenue fund for the department of highways.

(4) The identifying *devices* and *fee* paid for each unit shall not be transferable from one vehicle to another or transferable on the sale or change of ownership.

(5) Any owner or operator of any equipment included in the unit definition in subsection (2) of this section who violates any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars ($300), or by a sentence of not more than sixty (60) days in the county jail, or both."

Approved March 17, 1975.

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CHAPTER NO. 51

AN ACT TO AMEND SECTION 89-1001, R.C.M. 1947, TO PROVIDE AUTHORITY TO APPOINT A WATER COMMISSIONER TO INSURE DELIVERY OF WATER CONTRACTED BY AN IRRIGATION DISTRICT BOARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-1001, R.C.M. 1947, is amended to read as follows:

"**89-1001. Appointment of water commissioners — authority — compensation.** (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent (15%) of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under the Montana Water Use Act provided that when petitioners make proper showing that they are not able to obtain the application of the owners of at least fifteen per cent (15%) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under the Montana Water Use Act, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department, or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation

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under provisions of the state Water Conservation Act, chapter 1 of this title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

(5) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of the distributed waters shall pay their proportionate share of such fees and compensation.

(6) Upon the application of the board or boards of one (1) or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to said irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by the requesting district or districts; in all other matters the provisions of this chapter apply so long as they are consistent with this subsection."

Approved March 17, 1975.

CHAPTER NO. 52

AN ACT TO CUT THE JUNK VEHICLE DISPOSAL FEES IN HALF; AMENDING SECTION 69-6807, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-6807, R.C.M. 1947, is amended to read as follows:

"69-6807. Deposit of fees — special junk vehicle assessment fee. (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, and disposal of junk vehicles.

(2) There is assessed a special junk vehicle disposal fee commencing

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on July 1, 1973, on each new application for a motor vehicle title and on each transfer of motor vehicle title in the amount of *two dollars ($2),* on passenger cars and trucks under 8001 pounds GVW, which shall be collected by the county treasurer, and commencing with the year 1974, there shall be assessed an additional special junk vehicle disposal fee in the amount of *fifty cents ($.50)* on each passenger car and truck under 8001 pounds GVW registered for licensing. The *fifty cent ($.50)* fee shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in section 53-122, while owned by a dealer;

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this act and the cost of administration of the act to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved budget of the county. However, the yearly payment may not exceed one dollar ($1) for each motor vehicle that is licensed in that county."

Approved March 17, 1975.

CHAPTER NO. 53

AN ACT AMENDING SECTION 53-148, R.C.M. 1947, TO EXTEND THE PRIVILEGE OF PURCHASING PERSONALIZED LICENSE PLATES TO TRUCKS, MOTORCYCLES, CAMPING TRAILERS, AND OTHER PERSONAL USE VEHICLES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-148, R.C.M. 1947, is amended to read as follows:

"**53-148. Personalized license plates authorized.** Any person who is the registered owner of a motor vehicle, *a truck, motor home, camping trailer, motorcycle, or other vehicle for the owner's personal use* registered with the registrar of motor vehicles, or who makes application for original registration of a motor vehicle may, upon payment of the fee prescribed in section 53-153, apply to the registrar of motor vehicles for personalized license plates, in the manner prescribed in section 53-152 which plates

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shall be affixed to the motor vehicle for which registration is sought in lieu of the regular license plates provided for in this chapter."

Approved March 17, 1975.

CHAPTER NO. 54

AN ACT TO ALLOW THE CREATION OF A CAPITAL IMPROVEMENT FUND FOR COUNTY GOVERNMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 16-1186 that reads as follows:

16-1186. Capital improvement fund authorized. The governing body of any county in Montana may establish a capital improvement fund for the replacement and acquisition of property, plant or equipment costing in excess of five thousand dollars ($5,000) with a life expectancy of five (5) years or more, provided a capital improvement program has been formally adopted by said governing body.

Section 2. There is a new R.C.M. section numbered 16-1187 that reads as follows:

16-1187. Levies for fund. Monies for the capital improvement fund are to be derived from the multiple levies authorized by statute and appropriated to the capital improvement fund, however, no more than ten percent (10%) of the money derived from any one levy may be appropriated to the capital improvement fund.

Section 3. There is a new R.C.M. section numbered 16-1188 that reads as follows:

16-1188. Limitations on fund expenditure. The capital improvement fund shall not exceed at any time a competent engineering estimate of the cost of the adopted capital improvement program and provided that the funds are expended at least within each ten (10) year period.

Section 4. There is a new R.C.M. section numbered 16-1189 that reads as follows:

16-1189. Investment of fund. The monies held in the capital improvement fund may be invested as provided by law, however all interest earned on the fund must be credited to the capital improvement fund.

Approved March 17, 1975.

CHAPTER NO. 55

AN ACT TO AMEND SECTION 16-1803, R.C.M. 1947, TO PROVIDE A

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BIDDING PROCEDURE FOR COUNTY PURCHASES EXCEEDING TEN THOUSAND DOLLARS ($10,000); LIMITING A CONTRACT PERIOD TO FIVE (5) YEARS; PROVIDING A SOLICITATION OF BIDS; AND ALLOWING THE DEPARTMENT OF ADMINISTRATION TO SERVE AS PURCHASING AGENT FOR A COUNTY BY MUTUAL CONSENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1803, R.C.M. 1947, is amended to read as follows:

"**16-1803. Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings, roads and bridges exceeding ten thousand dollars ($10,000).** (1) No contract shall be entered into *by* a *county governing body* for the purchase of any vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of *ten* thousand dollars *($10,000)*, or for the construction of any building, *road or bridge* for which must be paid a sum in excess of *ten* thousand dollars *($10,000)*, without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the *governing body*, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) When the amount to be paid as the purchase price for any vehicle, or road machinery of any kind, or for any other machinery, apparatus, appliance or equipment, or for any materials or supplies of any kind, shall exceed *four* thousand dollars *($4,000)* the *county governing body* may provide for the payment of such purchase price in installments extending over a period of not more than *five (5)* years; provided that, at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

(3) Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials or supplies of any kind, which shall pro-

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vide for payment of rental, by the county, and that after a certain fixed amount has been paid as rental, the property shall become the property of the county, or any other similar provisions or conditions, shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this section shall apply thereto and govern and control the same.

(4) On any purchase contract entered into by a county governing body for the purchase of any vehicle, machinery, appliances, apparatus, building or materials and supplies, for which must be paid a sum in excess of four thousand dollars ($4,000) but less than ten thousand dollars ($10,000), bids shall be solicited without advertising, from persons, firms or corporations who have caused to be filed with the governing body of the county a request, in writing, that its name be listed with the governing body for solicitations on the particular items set forth in the request, and the governing body of the county shall let such contract to the lowest and best responsible bidder. However, if a person, firm, or corporation whose name is listed fails for a period of one (1) year to respond to any solicitation for bids, such listing may be cancelled. The governing body shall solicit bids of prospective suppliers whose names are listed as provided herein, which solicitation shall contain the same information as is required to be set forth in advertisements. In lieu of soliciting bids, the governing body may purchase any vehicle, machinery, appliances, apparatus, building or materials and supplies, for which must be paid a sum less than ten thousand dollars ($10,000), at public auction. Compliance with the provisions of the section shall be considered as meeting the requirements of section 16-1803 (1).

(5) The state department of administration may serve as a purchasing agent for the county governing body by mutual consent of both parties."

Approved March 17, 1975.

CHAPTER NO. 56

AN ACT AMENDING SECTION 75-7104, R.C.M. 1947, TO RAISE THE MAXIMUM AMOUNT FOR WHICH EACH SCHOOL DISTRICT MAY BECOME INDEBTED BY THE ISSUANCE OF BONDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7104, R.C.M. 1947, is amended to read as follows:

"**75-7104. Limitations on amount of bond issue.** (1) The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is *eight* percent *(8%)* of the assessed value of the taxable property therein as ascertained by

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the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. All bonds issued in excess of such amount shall be null and void, except as provided in subsection (2).

When the total indebtedness of a school district has reached the *eight* percent *(8%)* limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly.

(2) In the case of a school district within which a new major industrial facility which seeks to qualify for taxation as class seven (7) property under section 84-301, R.C.M. 1947, is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class seven (7) property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the *eight* percent *(8%)* limitation prescribed in subsection one (1). Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in subsection one (1) by a maximum of five percent (5%) of the estimated assessed value of the taxable property of the new major industrial facility when completed. The estimated assessed value of the taxable property of the new major industrial facility shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district, and copy of the department's statement of estimated assessed value shall be printed on each ballot used to vote on a bond issue proposed under this subsection.

Pursuant to the agreement between the new major industrial facility and the school district, and as a precondition to qualifying as class seven (7) property, the new major industrial facility and its owners shall, in addition to such taxes as may be imposed by the school district on property owners generally pay so much of the principal and interests on the bonds provided for under this subsection as shall represent payment on an indebtedness in excess of the limitation prescribed in subsection one (1). After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in subsection one (1), the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than twenty (20) years which credit shall, as a total amount, be equal to the amount by which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

A major industrial facility is a facility, subject to the taxing power of the school district, whose construction or operation will increase the population of the district so as to impose a significant burden upon the resources of the district and to require construction of new school facili-

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ties. A significant burden is an increase in ANB of at least twenty percent (20%) in a single year."

Section 2. This act is effective on its passage and approval.

Approved March 17, 1975.

CHAPTER NO. 57

AN ACT AMENDING SECTION 1-904, R.C.M. 1947, TO SET THE MINIMUM NUMBER OF COMMISSIONERS TO BE APPOINTED BY A MUNICIPAL OR REGIONAL AIRPORT AUTHORITY AT NOT LESS THAN FIVE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-904, R.C.M. 1947, is amended to read as follows:

"**1-904. Creation of municipal airport authority.** Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint *not less than* five (5) persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively, but thereafter, each commissioner shall be appointed for a term of five (5) years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body."

Approved March 17, 1975.

CHAPTER NO. 58

AN ACT TO REPEAL THE PROVISIONS REQUIRING LICENSING OF TELEVISION TRANSLATOR AND BOOSTER BROADCASTING SYSTEMS BY REPEALING SECTIONS 70-401 THROUGH 70-407, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sections 70-401 through 70-407, R.C.M. 1947, are repealed.

Approved March 17, 1975.

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CHAPTER NO. 59

AN ACT TO PERMIT THE DESTRUCTION OF CERTAIN JUVENILE RECORDS; AMENDING SECTION 10-1232, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1232, R.C.M. 1947, is amended to read as follows:

"**10-1232. Disposition of records.** (1) All court findings, orders, judgments and the legal and social files and records of the court, probation services and law enforcement agencies pertaining to a youth coming under this act shall be physically sealed when the youth reaches the age of eighteen (18) years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's eighteenth birthday the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Youth court records, probation officer's records, and all other reports of social and clinical studies shall not be opened to inspection except by consent of the court or the youth, upon petition to the youth court.

(4) Upon the physical sealing of the records pertaining to a youth pursuant to this section any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(5) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after ten (10) years from the date of sealing. *The records of youths who were twenty-eight (28) years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.*

(6) This section shall not apply to youth traffic records."

Approved March 17, 1975.

CHAPTER NO. 60

AN ACT RELATING TO CONTRIBUTORY NEGLIGENCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 58-607.1 that reads as follows:

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58-607.1. Contributory negligence — when bars recovery. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, if such negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

Approved March 17, 1975.

CHAPTER NO. 61

AN ACT TO AMEND SECTION 16-2625, R.C.M. 1947, DELETING THE REQUIREMENT THAT COUNTY TREASURERS' MONTHLY CASH COUNTS BE CERTIFIED TO THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2625, R.C.M. 1947, is amended to read as follows:

"**16-2625. Must permit department of intergovernmental relations and county clerk to examine books.** (1) The treasurer must permit the department of intergovernmental relations and county clerk or the board of county commissioners to examine his books and count the money in the treasury, when any of them wants to make an examination or counting.

(2) The county clerk and recorder at the close of business each month shall count the cash in the office of the county treasurer and shall *retain* a copy of the *counting* in his office."

Section 2. This act is effective upon passage and approval.

Approved March 17, 1975.

CHAPTER NO. 62

AN ACT AMENDING SECTION 59-1001, R.C.M. 1947, TO ALLOW PUBLIC EMPLOYEES TO TAKE ANNUAL LEAVE AFTER SIX MONTHS OF CONTINUOUS EMPLOYMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1001, R.C.M. 1947, is amended to read as follows:

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"**59-1001. Annual vacation leave.** (1) Each full-time employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment. For calculating vacation leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate vacation leave credits shall be earned and credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of *six (6)* calendar months. Persons regularly employed nine (9) or more months each year, but whose continuous employment is interrupted by the seasonal nature of the position, shall earn vacation credits. However, such persons must be employed *six (6)* qualifying months before they can use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service. Vacation leave credits shall be earned in accordance with the following schedule:

(a) from one (1) full pay period through ten (10) years of employment at the rate of fifteen (15) working days for each year of service;

(b) after ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service;

(c) after fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service;

(d) after twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service.

Permanent part-time employees are entitled to prorated annual vacation benefits if they have regularly scheduled work assignments and normally work at least twenty (20) hours each week of the pay period and have worked the qualifying period.

(2) It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this law. Should a question arise under this paragraph, it shall be submitted to arbitration as provided in chapter 201, Title 93, R.C.M., 1947 unless there is a collective bargaining agreement applicable."

Approved March 17, 1975.

CHAPTER NO. 63

AN ACT AMENDING SECTION 66-1038, R.C.M. 1947, TO ALLOW THE BOARD OF MEDICAL EXAMINERS TO REVOKE OR SUSPEND A LICENSE TO PRACTICE MEDICINE AND SURGERY WHEN THE HOLDER OF THE LICENSE HAS HAD HIS LICENSE REVOKED OR SUSPENDED BY ANOTHER JURISDICTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1038, R.C.M. 1947, is amended to read as follows:

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"**66-1038. Revocation or suspension of license — probation.** (1) The board may, when it has been brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) Is mentally or physically unable, safely, to engage in the practice of medicine, or has procured his license to practice medicine by fraud or misrepresentation or through mistake, or has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or when a condition exists which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) Has been guilty of unprofessional conduct;

(c) Has practiced medicine while his license was suspended or revoked;

(d) Has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) Has, while under probation, violated its terms; make an investigation, including requiring the person to submit to a physical examination or a mental examination or both by a physician or physicians selected by the board when it appears in the best interests of the public that this evaluation be secured, to determine the probability of the existence of these conditions or the commission of these offenses. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person, at his last address of record with the department, a specification of the charges against him, together with a written citation of the time and place of the hearing on it, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense. The time fixed for the hearing shall not be less than thirty (30) days from the date of mailing the notice.

(2) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state, charging him with the commission of any of the offenses set forth in section 66-1037, or subsection one (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused, at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(3) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in section 66-1037, or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board does find that the conditions referred to in section 66-1037 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) Revoke his license;

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(b) Suspend his right to practice for a period not exceeding one (1) year;

(c) Suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) Place him on probation; or

(e) Take any other action in relation to disciplining him as the board in its discretion considers proper.

(4) The department in cases of revocation, suspension, or probation shall enter in its records the facts of the action, and of subsequent action of the board with respect to it.

(5) On the expiration of the term of suspension, the licensee shall be reinstated by the board, if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or if not restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing, with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(6) If a person holding a license to practice medicine under this act is, by a final order or adjudication of a court of competent jurisdiction, adjudged to be mentally incompetent or insane, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured, or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board."

Approved March 18, 1975.

CHAPTER NO. 64

AN ACT AMENDING SECTION 41-1301, R.C.M. 1947, RELATING TO PAYMENT OF WAGES BY DELETING "THE STATE OF MONTANA OR ANY LEGAL SUBDIVISION THEREOF".

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1301, R.C.M. 1947, is amended to read as follows:

"**41-1301. Payment of wages.** Definitions for the purpose of this act.

(1) Each employer, or an authorized representative of the employer, shall on written demand, prior to the commencing of work, notify each

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employee as to the rate of wages to be paid, whether by the hour, day, week, month or yearly basis and date of paydays. Such notification shall be in writing to each employee or the posting of notice in a conspicuous place. The provisions of this section shall not apply in respect to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received and hours to be worked, or to employers engaged in agriculture or stockraising, provided, however, such employers shall conform with the provisions of section 41-1303.

(2) Every employer of labor in the state of Montana, shall pay to each of his employees the wages earned by such employees in lawful money of the United States, or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed shall withhold from any employee any wages earned or unpaid for a longer period than *ten (10) business* days after the same became due and payable; provided, however, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law; provided further, that if at such time of payment of wages any employee shall be absent from the regular place of labor, he shall be entitled to such payment at any time thereafter. Provisions of this section shall not apply to any professional, supervisory or technical employees, who by custom, receive their wages earned at least once monthly.

(3) The following are the definitions used for the purpose of this act:

(a) "Employ" means permit or suffer to work.

(b) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States.

(c) "Employee" includes any person who works for another for hire.

(d) "Wages" includes any moneys due an employee from the employer or employers whether to be paid by the hour, day, week, semimonthly, monthly or yearly and shall include bonus, piecework, tips and gratuities of any kind.

(e) "Commissioner of labor" refers to the director, commissioner or chief of the labor department as such department is defined by law, or any person or persons designated by him for the purpose of this act."

Approved March 18, 1975.

CHAPTER NO. 65

AN ACT TO AMEND SECTION 84-4924, R.C.M. 1947, BY REDUCING THE MINIMUM LATE FILING AND LATE PAYMENT PENALTIES FROM TEN DOLLARS ($10) TO FIVE DOLLARS ($5); CLARIFYING

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THE PROVISIONS OF THAT SECTION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4924, R.C.M. 1947, is amended to read as follows:

"**84-4924. Penalties for violations of act.** (1) If any person, without intent to evade any tax imposed by this act, fails to *file* a return of income *on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of five percent (5%) of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than five dollars ($5). The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part.* If any person, without intent to evade any tax imposed by this act, fails to pay any tax *on or before its due date (determined with regard to an extension of time granted for the filing of a return), there shall be added to the tax a penalty of ten percent (10%) of said tax, but not less than five dollars ($5), and interest shall accrue on the tax at the rate of nine percent (9%) per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.*

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than twenty-five dollars ($25), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the department thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(4) The certificate of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied."

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Section 2. This act is effective upon passage and approval, and its provisions apply to taxable years ending on and after December 31, 1974.

Approved March 18, 1975.

CHAPTER NO. 66

AN ACT TO AMEND SECTION 8-101, R.C.M. 1947, BY PROVIDING THAT A MOTOR CARRIER DOES NOT INCLUDE MOTOR VEHICLES USED IN CARRYING JUNK VEHICLES FROM A COLLECTION POINT TO A MOTOR VEHICLE WRECKING FACILITY OR A MOTOR VEHICLE GRAVEYARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8-101, R.C.M. 1947, is amended to read as follows:

"**8-101. Definition of terms.** Unless the context requires otherwise, in this act:

(1) "Commission" or "board" means the public service commission provided for in section 82A-1702.

(2) "Corporation" means a corporation, company, association or joint-stock association.

(3) "Person" means an individual, firm, or copartnership.

(4) "Certificate" means the certificate of public convenience and necessity issued under this act.

(5) "Public highway" means a public street, road, highway, or way in this state.

(6) "Motor vehicle" includes vehicles or machines, motor trucks, tractors or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state, and any trailer, semi-trailer, dollie or other vehicle drawn thereby.

(7) "Between fixed termini or over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, under this act, is a question of fact to be determined by the commission.

(8) "Motor carrier" means a person or corporation, their lessees, trustees, or receivers, appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking. However,

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this act does not affect motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if the motor vehicles are not used in carrying other property or passengers for compensation; the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools, or in transportation movements related to school activities which are sponsored or supervised by school authorities, the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person, firm, or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies, and materials in construction and production is concerned; the transportation of property by motor vehicle in a city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or in the commercial areas thereof as determined by the commission; the transportation of newspapers, newspaper supplements, periodicals or magazines; tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles; *motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;* or ambulances.

(9) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business is not a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. This act does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

(10) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers, under section 8-116.

(11) "Railroad" means the movement of cars on rails, regardless of the motive power used."

Approved March 18, 1975.

CHAPTER NO. 67

AN ACT TO AMEND SECTIONS 26-201, 46-1902 AND 46-1903, R.C.M. 1947, BY DELETING THE WOLF FROM THE PREDATORY AND WILD ANIMAL LIST, AND DELETING BLACK-FOOTED FERRET FROM THE FUR-BEARING ANIMALS LIST.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-201, R.C.M. 1947, is amended to read as follows:

"**26-201. Definitions.** For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, *and* beaver.

Predatory animals. Coyote, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish) and all species of the genus acipenser (sturgeon).

Wild buffalo. Buffalo or bison which have not been reduced to captivity."

Section 2. Section 46-1902, R.C.M. 1947, is amended to read as follows:

"**46-1902. Meaning of term "wild animal."** For the purpose of this act the term "wild animal" shall include coyote, lynx, bobcat, and any other animal causing depredations upon livestock."

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Section 3. Section 46-1903, R.C.M. 1947, is amended to read as follows:

"**46-1903. Department to supervise destruction of predatory animals — co-operation with other agencies — administration of moneys.** (1) The department of livestock shall conduct the destruction, extermination, and control of wild animals including wolverine, coyote, mountain lion, lynx, cougar, bobcat and other wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry; and the protection and safeguarding of livestock and poultry in this state, against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state, and for carrying out the programs in an efficient and practical manner, responsive to the need for control in each area of this state. The department shall adopt rules applicable to predatory animal control, which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations, and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas, at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals, and their attacks on livestock and poultry, either singly or in packs or bands. The department shall cooperate with authorized representatives of the federal government, including the Biological Survey and the Fish and Wild Life Service, the state fish and game commission, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.

(2) The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money from the levy under section 84-5214, and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department, responsive to the necessities of control in various areas of the state.

(3) This section does not interfere with or impair the power and duties of the fish and game commission in the control of predatory animals by the commission, as authorized by law, nor the obligation of the commission to expend its funds in cooperation with the department, for predatory animal control, as required by law. Funds of the fish and game commission for the cooperative predatory animal control shall be administered and expended by the fish and game commission."

Approved March 18, 1975.

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CHAPTER NO. 68

AN ACT AMENDING SECTION 70-502, R.C.M. 1947, TO CHANGE THE MEANING OF "LINE" WITH REGARD TO THE NOMINAL VOLTAGE LEVEL CARRIED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-502, R.C.M. 1947, is amended to read as follows:

"**70-502. Definitions.** When used in this act:

(1) The term "electric supplier" means any electrical utility and any electric co-operative.

(2) The term "electric utility" means a person, firm or corporation other than an electric co-operative which furnishes electrical service to the public.

(3) The term "electric co-operative" means a rural electric co-operative organized under chapter 5 of Title 14, or a foreign corporation admitted thereunder to do business in Montana.

(4) The term "premises" means a building, residence, structure, or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for farming, business, commercial, industrial, institutional, governmental or trailer court purposes, shall together constitute one premises, except that any such building, structure or facility other than a trailer court shall not, together with any other building, structure or facility, constitute one premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure or facility.

(5) The term "line" means any electric conductor operating at a nominal voltage level of *thirty-four thousand five hundred (34,500)* volts or less, measured phase-to-phase.

(6) The term "commercial premises" means the premises where the business of selling, warehousing or distributing a commodity, or other business activity is carried on, or professional or other services are rendered.

(7) The term "industrial premises" means the premises where an industrial activity is carried on, including, but not limited to, the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating or processing activities."

Approved March 18, 1975.

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CHAPTER NO. 69

AN ACT AMENDING SECTION 11-2022, R.C.M. 1947, TO INCREASE THE LIMITS UPON COMPENSATION WHICH MAY BE PAID TO VOLUNTEER FIREMEN FOR DISABILITY INCURRED WHILE IN THE PERFORMANCE OF DUTY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2022, R.C.M. 1947, is amended to read as follows:

"**11-2022. Disability, death, insurance and pension benefits.** 1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or nonconfined, *in the amount of his necessary and reasonable medical expenses resulting directly from such disability, and incurred within a period of not more than thirty-six (36) months from the date of the injury which caused such disability, not to exceed a total of twenty-five thousand dollars ($25,000).*

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the *sum of one thousand five hundred dollars ($1,500).* The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the *actual necessary and reasonable expenses, or the sum of one thousand five hundred dollars ($1,500), whichever is less,* shall be allowed.

4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of *seventy-five dollars ($75)* per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided

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in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars ($1,000,000) then the industrial accident board shall set aside and pay over to the public employees' retirement system, the smaller of such amount in excess of one million dollars ($1,000,000), or an amount equal to ninety-five percent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount set aside by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount set aside shall be sufficient to pay each such qualified claimant at least twenty dollars ($20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount set aside shall not be sufficient to pay each qualified claimant at least twenty dollars ($20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of fifty dollars ($50) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of fifty dollars ($50) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year."

Section 2. This act is effective on its passage and approval.

Approved March 18, 1975.

CHAPTER NO. 70

AN ACT TO AMEND SECTION 32-21-151, R.C.M. 1947, ALLOWING USE OF EMERGENCY REFLECTIVE TRIANGLES AS AN ALTERNATE TO OTHER REQUIREMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-21-151, R.C.M. 1947, is amended to read as follows:

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"**32-21-151. Certain vehicles to carry flares or other warning devices.** (a) No person shall operate any motor truck of one (1) ton capacity or greater, passenger bus, or truck tractor upon any highway outside the corporate limits of municipalities at any time unless there shall be carried in such vehicle the following equipment except as provided in paragraph (b):

1. At least three (3) flares or three (3) red electric lanterns or three (3) portable red emergency reflectors each of which shall be capable of being seen and distinguished at a distance of not less than six hundred (600) feet under normal atmospheric conditions at nighttime.

No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to display a minimum of twenty-four (24) square inches of reflective surface, or two (2) reflecting elements; one above the other, either of which shall be capable of reflecting red light clearly visible from all distances within six hundred (600) feet to one hundred (100) feet under normal atmospheric conditions at night when directly in front of lawful upper beams of head lamps.

2. At least three (3) red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried.

3. At least two (2) red-cloth flags, no less than twelve (12) inches square, with standards to support such flags.

(b) No person shall operate at the time and under the conditions stated in paragraph (a) any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there shall be carried in such vehicle three (3) red electric lanterns or three (3) portable red emergency reflectors meeting the requirements of paragraph (a) of this section, and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame.

(c) As an alternative to the equipment required in paragraphs (a) and (b) of this section, three (3) emergency reflective triangles conforming with U. S. department of transportation motor vehicle safety standard 125 may be carried."

Approved March 18, 1975.

CHAPTER NO. 71

AN ACT ADDING BARLEY TO THE WHEAT RESEARCH AND MARKETING PROGRAM; AMENDING SECTIONS 3-2902, 3-2904, 3-2906, 3-2909, 3-2911, 3-2913, 3-2917, AND 82A-304, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2902, R.C.M. 1947, is amended to read as follows:

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"**3-2902. Declaration of policy.** In the presence of the facts that wheat is the principal grain crop produced in Montana, and as such is an agricultural resource of the first magnitude in the economy of the inhabitants of Montana, a prime factor in the production of wealth and the development and stabilization of property values and of activities and enterprises which are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat is a commodity which enters a world market highly competitive in character, *and that barley is also an important crop,* it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity and general welfare of its people by encouraging and promoting intensive, scientific and practical research into all phases of wheat *and barley* culture and production, marketing and use and into the development of markets for wheat *and barley* grown in Montana by the department of agriculture."

Section 2. Section 3-2904, R.C.M. 1947, is amended to read as follows:

"**3-2904. Definitions.** As used in this act, unless the context requires otherwise:

(1) "Committee" means the Montana wheat research and marketing committee provided for in section 82A-304;

(2) "Grower" means any landowner personally engaged in growing wheat *or barley*, a tenant of the landowner personally engaged in growing wheat *or barley*, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, co-operative, trust, sharecropper, and any and all other business units, devices, and arrangements;

(3) "First purchaser" means any person, public or private corporation, association, or partnership, buying, accepting for shipment, or otherwise acquiring the property in or to wheat *or barley* from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat *or barley* is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(4) "Commercial channels" means the sale of wheat *or barley* for any use, when sold to any commercial buyer, dealer, processor, co-operative, or to any person, public or private, who resells any wheat *or barley* or product produced from wheat *or barley*; and

(5) "Sale" includes any pledge or mortgage of wheat *or barley*, after harvest, to any person, public or private."

Section 3. Section 3-2906, R.C.M. 1947, is amended to read as follows:

"**3-2906. Compensation — per diem.** Members of the committee shall receive no salary, but shall be paid, from the wheat research and marketing account in the federal and private revenue fund, a per diem of *twenty-five* dollars *($25)* for each day they are engaged in the transaction of official business, together with their actual and necessary expenses incurred while on official business."

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Section 4. Section 3-2909, R.C.M. 1947, is amended to read as follows:

"**3-2909. Powers of the committee.** (1) The committee may:

(a) Adopt rules necessary for the administration of this act;

(b) Provide, through the department, for the enforcement of this act;

(c) Provide for the conduct of research into the production, marketing, and uses of wheat *and barley*;

(d) Enter into contracts or agreements with Montana state university and other local, state, or national organizations, public or private, for the purposes of improving wheat *or barley* quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat *or barley*, developing alternative crops for wheat *or barley*, and carrying out all research and marketing contemplated by this act. The committee may not establish research units or agencies of its own.

(2) No researchers or professional or scientific personnel may be employed to carry out this act except as provided in subsection (1) (d) of this section.

(3) None of the powers or duties provided for in this act permit participation in state or federal political action by the committee."

Section 5. Section 3-2911, R.C.M. 1947, is amended to read as follows:

"**3-2911. Annual assessment on wheat and barley grown.** There is hereby levied an annual assessment of two and one-half (2 ½) mills per bushel upon all wheat grown, *and, five (5) mills per hundredweight on all barley grown* in the state of Montana, and sold through commercial channels. The assessment is hereby levied and imposed on each grower of wheat *or barley* in the state of Montana:

(1) in the case of sale of wheat *or barley*, at the time of any sale of wheat *or barley* by a grower, and shall be collected by the first purchaser of the wheat *or barley* from the grower at the time of each settlement for wheat *or barley* purchased, or

(2) in the case of a pledge or mortgage of wheat *or barley* as security for a loan under any federal price support program, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan at the time the loan is made by the agency or person making the loan.

The assessment levied under the provisions of this act, shall be deducted and collected as provided by this act, whether such wheat *or barley* is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage or other transaction in which the wheat *or barley* grower parts with title to the wheat *or barley*, or creates some interest therein in a pledgee, mortgagee or other person."

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Section 6. Section 3-2913, R.C.M. 1947, is amended to read as follows:

"3-2913. Buyer's delivery of invoice to grower — form — filing of sworn statement — payment of assessment. (1) The purchaser of the wheat *or barley* at the time of sale, or the pledgee, mortgagee, or other lender at the time of the loan or advance, shall give separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

(a) The name and address of the grower and seller;

(b) The name and address of the purchaser or the lender;

(c) The number of bushels of wheat *or hundredweights of barley* sold, mortgaged, or pledged;

(d) The date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within twenty (20) days after the end of a month in which he purchases a grower's wheat *or barley* or in which a lender makes a loan or advance on a grower's wheat *or barley*, a sworn statement of the number of bushels of wheat *or hundredweights of barley* purchased in Montana or the number of bushels *of wheat or hundredweights of barley* mortgaged or pledged, or otherwise transferred or liened as security for a loan, during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in section 3-2911 for deposit in the wheat research and marketing account in the revolving fund.

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After thirty (30) days and before ninety (90) days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed two (2) years after the refund is made. All original invoices shall be returned to the grower with the refund payment."

Section 7. Section 3-2917, R.C.M. 1947, is amended to read as follows:

"3-2917. Research and marketing account — sources — use — expenditures. (1) There shall be an account in the federal and private revenue fund known as the wheat research and marketing account. The following shall be placed in the account:

(a) The proceeds of all millage levies collected under this chapter, and

(b) The proceeds from all gifts, grants, or donations to the department for research authorized under this chapter.

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(2) The account shall be maintained for the purposes of this chapter and shall be separate from all other accounts of the department."

Section 8. Section 82A-304, R.C.M. 1947, is amended to read as follows:

"**82A-304. Montana wheat research and marketing committee — composition — qualification — term — allocation.** (1) There is a Montana wheat research and marketing committee.

(2) The committee consists of seven (7) members and three (3) ex officio, nonvoting members.

(a) The governor shall appoint one member from each of the following districts:

(i) District I, consisting of Daniels, Sheridan, and Roosevelt counties;

(ii) District II, consisting of Valley, Phillips, Blaine, and Hill counties;

(iii) District III, consisting of Liberty, Toole, Glacier, and Pondera counties;

(iv) District IV, consisting of Chouteau and Teton counties;

(v) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell counties;

(vi) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(vii) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure counties.

(b) The ex officio members are:

(i) The director of the department of agriculture;

(ii) The dean of agriculture of Montana state university;

(iii) A representative of the grain trade in Montana elected by a majority of the appointed members.

(c) Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat *or barley* in this state, and be a resident of and have farming operations in the district from which appointed. No more than four (4) of the appointed members may be of the same political party.

(d) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within ninety-one (91) days before the expiration of a committeeman's term.

(3) The appointed members shall serve staggered terms of five (5)

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years. The ex officio representative of the grain trade shall serve at the pleasure of the committee.

A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member shall be given a copy of the written charges at least ten (10) days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

A member who ceases to reside in the state or in the district from which he was appointed, or who ceases to grow wheat *or barley* in the state or district, is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(4) The committee is allocated to the department for administrative purposes only as prescribed in section 82A-108."

Approved March 18, 1975.

CHAPTER NO. 72

AN ACT CHARGING COSTS OF CRIMINAL PROSECUTIONS OF OFFENSES COMMITTED WITHIN THE STATE PRISON TO THE STATE RATHER THAN THE COUNTY; AMENDING SECTION 16-3802, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3802, R.C.M. 1947, is amended to read as follows:

"**16-3802. Enumeration of county charges — limitation as to state prison cases.** *(1)* The following are county charges:

(a) Charges incurred against the county by virtue of any provision of this title.

(b) One-half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.

(c) The salary and actual expenses for traveling when on official duty allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

(d) The board of prisoners confined in jail.

(e) The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

(f) The accounts of the coroner of the county for such services as are provided by law.

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(g) All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

(h) The necessary expenses incurred in the support of county hospitals and poor farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

(i) The contingent expenses necessarily incurred for the use and benefit of the county.

(j) Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

(2) Notwithstanding the preceding subsection, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. Such costs shall be paid by the department of institutions."

Approved March 18, 1975.

CHAPTER NO. 73

AN ACT TO CORRECT CERTAIN STATUTORY ERRORS DESIGNATING AND DESCRIBING THE MONTANA CO-ORDINATE SYSTEM; AMENDING SECTIONS 67-2011 AND 67-2015, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-2011, R.C.M. 1947, is amended to read as follows:

"**67-2011. Co-ordinate system adopted — designation — division of state into zones.** The system of plane co-ordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the state of Montana is hereafter to be known and designated as the "Montana Co-ordinate System."

For the purpose of the use of this system the state is divided into a "North Zone," and "Central Zone," and a "South Zone."

The area now included in the following counties shall constitute the North Zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

The area now included in the following counties shall constitute the Central Zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, *McCone,* Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

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The area now included in the following counties shall constitute the South Zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone."

Section 2. Section 67-2015, R.C.M. 1947, is amended to read as follows:

"67-2015. Technical description of zones—stations marked on ground. (a) For purposes of more precisely defining the Montana Co-ordinate System, the following description by the United States Coast and Geodetic Survey is adopted:

The Montana Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51' and 48° 43', along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel *44°00'* north latitude. This origin is given the co-ordinates: x=2,000,000 feet and y=0 feet.

The Montana Co-ordinates System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27' and 47° 53', along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30' west of Greenwhich and the parallel 45° 50' north latitude. This origin is given the co-ordinates: x=2,000,000 feet and y=0 feet.

The Montana Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52' and 46° 24', along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the co-ordinates: x=2,000,000 feet and y=0 feet.

(b) The position of the Montana Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first-order and second-order work, whose positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Montana Co-ordinate System."

Approved March 19, 1975.

CHAPTER NO. 74

AN ACT TO ESTABLISH ANNIVERSARY DATE REGISTRATION FOR MOTOR VEHICLES; PROVIDING FOR THE PAYMENT OF TAXES AND FEES THEREON; PROVIDING FOR A LIEN DATE; PROVIDING FOR THE ADMINISTRATION OF THE ACT; AND AMENDING SECTIONS 32-3201, 32-3315, 53-108, 53-114, 53-115, AND 84-406, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 53-154 that reads as follows:

53-154. Definitions. For purposes of this act "vehicle" means any motor vehicle as defined in section 53-104, R.C.M. 1947, subject to annual registration in this state, except:

(a) vehicles owned or leased and operated by the government of the United States, of the state of Montana or its political subdivisions;

(b) mobile homes and motor homes;

(c) vehicles that are registered in accordance with, or subject to, sections 53-106.1, 53-106.2, 53-106.8, or 53-148, R.C.M. 1947;

(d) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;

(e) trailers, semi-trailers, tractors, buses, motorcycles, and cycle motors;

(f) special mobile equipment as defined in section 53-642, R.C.M. 1947.

Section 2. There is a new R.C.M. section numbered 53-155 that reads as follows:

53-155. Registration period based on first registration. Notwithstanding any other provisions of Title 53 regarding the registration of motor vehicles, commencing January 1, 1976, all vehicles subject to the provisions of this act shall be registered for twelve (12) month periods based upon the time they are first registered in this state pursuant to this act.

Section 3. There is a new R.C.M. section numbered 53-156 that reads as follows:

53-156. Registration periods designated. There shall be ten (10) registration periods, each of which shall commence on the first day of a calendar month. The periods are designated as follows:

(1)	January 1 through January 31	1st period
(2)	February 1 through February 28/29	2nd period
(3)	March 1 through March 31	3rd period
(4)	April 1 through April 30	4th period
(5)	May 1 through May 31	5th period
(6)	June 1 through June 30	6th period
(7)	July 1 through July 31	7th period
(8)	August 1 through August 31	8th period
(9)	September 1 through September 30	9th period
(10)	October 1 through October 31	10th period

For purposes of this act the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the 1st period of the year following.

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Section 4. There is a new R.C.M. section numbered 53-157 that reads as follows:

53-157. Reregistration on anniversary date — registrar to make rules. A vehicle that has once been registered for any of the above-designated periods shall thereafter be reregistered for a like period on or before the anniversary date of the initial registration. The anniversary date for reregistration shall be the 25th day of the month for the designated registration period. The registrar of motor vehicles shall adopt rules for the implementation and administration of this act and for the identification of the registration on the vehicles. The registrar shall provide for simultaneous registration of multiple vehicles which have common ownership regardless of their individual registration periods.

Section 5. There is a new R.C.M. section numbered 53-158 that reads as follows:

53-158. Transitional and new registrations. Each vehicle currently registered in this state and subject to the provisions of this act shall be reregistered under the provisions of this act and shall be assigned a registration period which shall correspond to the last digit on the license plate issued to that vehicle in the year 1975. Vehicles which are registered for the first time in this state shall be assigned a registration period corresponding to when they are first registered in this state. The registration period for a vehicle shall thereafter remain the same from year to year.

Section 6. There is a new R.C.M. section numbered 53-159 that reads as follows:

53-159. When vehicle property tax is due. Property taxes and new car taxes shall be paid on the date of registration or reregistration of the vehicle. If the anniversary date for reregistration of a vehicle shall pass while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes shall abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes due and owing on the vehicle.

Section 7. There is a new R.C.M. section numbered 53-160 that reads as follows:

53-160. Department of revenue and department of highways to make rules. The department of revenue shall adopt rules for the payment of property taxes and the department of highways shall adopt rules for the payment of new car taxes under the provisions of this act. The department of revenue may adopt regulations for the proration of taxes for the implementation and administration of this act, but shall specifically provide that new car taxes shall be for a full registration period of not less than eleven (11) months and not more than thirteen (13) months.

Section 8. There is a new R.C.M. section numbered 53-161 that reads as follows:

53-161. Proration of fees during transition. For purposes of imple-

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mentation, all vehicles subject to this act shall be registered or reregistered as previously required by law between January 1, 1976 and February 15, 1976, provided, however, that all taxes and other fees due thereon shall be prorated from January 1, 1976 until the first day of the period in which the vehicle shall be registered under the provisions of this act and as indicated by the last digit on the license plate issued to such vehicle in 1975. Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and thereon shall pay all taxes and fees due thereon for a twelve (12) month period.

Section 9. There is a new R.C.M. section numbered 53-162 that reads as follows:

53-162. Assessment on first day of registration period. Vehicles subject to the provisions of this act shall be assessed as of the first day of the year in which the registration period occurs and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue thereafter until such fees and taxes shall have been paid.

Section 10. Section 84-406, R.C.M. 1947, is amended to read as follows:

"84-406. Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles. (1) The department of revenue or its agent must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. It must also ascertain and assess all mobile homes arriving in his [each] county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January, *or upon their anniversary registration date*; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may by subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles and campers which are required by subdivision 4 hereof to be assessed as of the first day of January.

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(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1, *or as of the anniversary registration date of those vehicles subject to sections 53-154 through 53-162,* in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January *or the anniversary registration date thereof, whichever is applicable,* in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The department of revenue or its agent must ascertain and assess all snowmobiles and campers in his [each] county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile or campers was at 12 M of the first day of January in each year; provided, however, that snowmobiles and campers which constitute inventory of snowmobile dealers and camper dealers shall be assessed to the dealers as of 12 M of the first Monday of March in each year."

Section 11. Section 53-108, R.C.M. 1947, is amended to read as follows:

"**53-108. Renewal of registration.** *Except as provided in sections 53-154 through 53-162, every* vehicle registration under this *chapter* shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually.

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The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicles between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year."

Section 12. Section 53-114, R.C.M. 1947, is amended to read as follows:

"53-114. Application for registration of motor vehicles and payment of license fees thereon — assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or reregistration, upon blank form to be prepared and furnished by the registrar of motor vehicles, which application shall contain:

(a) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(b) Name and address of conditional sales vendor, mortgagee or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.

(c) Description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) In case of reregistration, the license number for the preceding year.

(e) Such other information as the registrar of motor vehicles may require.

(2) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M., 1947, shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M., 1947, shall upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of

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said vehicle and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in section 84-101, R. C. M., 1947, shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in section 84-101, R.C.M., 1947, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle except a mobile home as defined in section 84-101, R.C.M., 1947, acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 32-3315, R.C.M., 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

(9) Motor vehicles subject to anniversary date registration as provided in sections 53-154 through 53-162 are exempt from the provisions of (5), (6), and (7) of this section."

Section 13. Section 53-115, R.C.M. 1947, is amended to read as follows:

"**53-115. Time for making application.** Registration must be renewed annually and license fees paid annually. *Except as provided in sections 53-154 through 53-162, all* registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer as aforesaid not

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later than February 15 of each year. Provided, however, that in the event of transfer of a motor vehicle during the registration year, such motor vehicle shall be reregistered and relicensed as provided by statute."

Section 14. Section 32-3201, R.C.M. 1947, is amended to read as follows:

"**32-3201. Time for payment of fees.** (1) A person who owns or operates a vehicle subject to the fees provided in sections 32-3301 through 32-3308 and section 32-3310 shall pay the fees provided in this chapter.

(2) Prior to or at the time of registration of the vehicle as required under Title 53, or prior to the operation of the vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of section 53-109.1 or section 53-109.2, the fees provided in this chapter shall be due and payable at the time of registration.

(3) A person who makes application for license after the first day of July of any year shall pay one-half (½) of those fees.

(4) When a person makes application for registration required under Title 53, chapter 1, for a period of time other than the calendar year, the fees provided in Title 32, chapter 33, shall be computed for the registration period at one-twelfth (1/12) of applicable fee for each month or part of month in the registration period."

Section 15. Section 32-3315, R.C.M. 1947, is amended to read as follows:

"**32-3315. Sales tax on new motor vehicles.** (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The word motor vehicle as used in this section means automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent (1 ½%) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year *or prorated one-twelfth (1/12) for each month or part of month for a registration period other than a calendar year or calendar quarter.*

(b) One and one-eighth per cent (1 ⅛%) of the list price during the second quarter of the year.

(c) Three-fourths (¾) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths (⅜) of one per cent (1%) during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the F.O.B. factory

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list price or F.O.B. port of entry list price, the department may use published price lists.

(4) The proceeds from this tax shall be remitted to the state treasurer every thirty (30) days for credit to the state highway account of the earmarked revenue fund.

(5) The new vehicle is not subject to any other assessment or taxation during the calendar year in which the original application for title is made."

Section 16. This act is effective upon passage and approval.

Approved March 19, 1975.

CHAPTER NO. 75

AN ACT TO AMEND SECTIONS 16-1185 AND 76-108, R.C.M. 1947, TO PROVIDE FOR THE APPROPRIATION OF FEDERAL REVENUE SHARING FUNDS BY THE BOARD OF COUNTY COMMISSIONERS OF ANY COUNTY TO MONTANA CONSERVATION DISTRICTS; AND TO GRANT TO THE MONTANA CONSERVATION DISTRICTS THE AUTHORITY TO APPLY FOR AND RECEIVE FEDERAL REVENUE SHARING FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1185, R.C.M. 1947, is amended to read as follows:

"**16-1185. Power of county to spend federal and state funds.** The board of county commissioners of any county in the state of Montana shall have the power and authority to appropriate monies received from the federal or state government, regardless of the time the monies are received, by formal resolution. The resolution shall state the source of the monies, the expenditure program for the funds, and the effective date of the appropriation. The expenditure of said funds shall be according to federal requirements specified in the federal act, or state requirements specified in the state legislation. *The monies appropriated under this section may include federal revenue sharing funds granted to Montana conservation districts organized under Title 76, chapter 1, R.C.M. 1947.*"

Section 2. Section 76-108, R.C.M. 1947, is amended to read as follows:

"**76-108. Powers of districts and supervisors.** A. A conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the

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character of soil erosion, floodwater and sediment damages, and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, R. C. M. 1947, on lands owned or controlled by this state or any of its agencies with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations, and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

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(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion, and for flood prevention, and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion- prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention projects, or combination thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire an indebtedness or lien that may exist against the district or property thereof;

(13) To fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities and materials

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furnished or provided. Revenues from these sources may be expended in carrying out the purposes and provisions of this act;

(14) To cause taxes to be levied in the same manner provided for in Title 76, chapter 2, R. C. M. 1947, for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided.

(15) To apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter.

B. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state."

Approved March 19, 1975.

CHAPTER NO. 76

AN ACT TO AMEND SECTION 69-2203, R.C.M. 1947, AND PROVIDE IMMUNITY OF LONG-TERM CARE FACILITIES WHEN FURNISHING BLOOD PRODUCT TRANSFUSION SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2203, R.C.M. 1947, is amended to read as follows:

"**69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals.** The furnishing of, and the injecting or transfusing into the human body, of whole blood, plasma, blood products, and blood derivatives, by a hospital, *long-term care facility* or doctor, of any such substances, obtained by such hospital, *long-term care facility* or doctor so furnishing, injecting or transfusing the same, from any source or sources which said hospital, *long-term care facility* or doctor is not directly or indirectly financially interested in, or has any control over, is hereby declared not to be a sale of such whole blood, plasma, blood products, or blood derivatives for any purpose or purposes, and no physician, *long-term care facility* or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital, *long-term care facility* or doctor for injuries resulting from the furnishing or performing of such services."

Approved March 19, 1975.

CHAPTER NO. 77

AN ACT TO AMEND THE OFF-STREET PARKING LAW; ENABLING PARKING COMMISSIONS TO PROVIDE COORDINATED REGULA-

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TION OF ON-STREET AS WELL AS OFF-STREET PARKING; PROVIDING FOR VARIABLE SIZE OF PARKING COMMISSIONS WHERE DESIRED; INCREASING PERMISSIBLE GROUND FLOOR AREA OF PARKING BUILDINGS FOR INCIDENTAL USES; DELETING REQUIREMENT OF TRIPLING PARKING AREA NECESSARY FOR ACQUISITION OF LANDS ALREADY USED FOR PARKING; AMENDING SECTIONS 11-3701, 11-3704, 11-3707, AND 11-3708, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. The chapter heading of Title II, chapter 37 is hereby amended to read as follows:

"PARKING"

Section 2. Section 11-3701, R.C.M. 1947, is amended to read as follows:

"**11-3701. Purpose of act.** It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas, and the lack of adequate off-street parking facilities in some cities, is against the public interest; and the purpose of this act is to provide means whereby cities, in which additional off-street parking facilities is considered necessary, may obtain and provide same, *and whereby such cities may regulate on-street and off-street parking in a coordinated manner.*"

Section 3. Section 11-3704, R.C.M. 1947, is amended to read as follows:

"**11-3704. Members of commission — appointment — qualifications — vesting of commission powers — expenses and compensation — term of office — chairman — removal.** When the legislative body of a city first adopts a resolution declaring need for a parking commission to function, the mayor, with the approval of the legislative body, shall appoint *not less than* five (5) *nor more than seven (7)* electors of the city as members of the commission. *The number of members of such commission, once established, may be changed within these limits from time to time as desired by subsequent resolutions of the legislative body of the city, provided, however, that a resolution to reduce shall not require resignation of any member prior to completion of his appointed term.* The powers of each commission shall be vested in the members thereof then in office. Members shall receive their actual and necessary expenses, including traveling expenses and may receive such other compensation as the legislative body may prescribe.

Three of the members who are first appointed shall be designated to serve for terms of one, two, and three years, respectively, from the date of their appointments, and two shall be designated to serve for terms of four years from the date of their appointments, *except that for a seven (7) member commission there shall be two additional appointments of two (2) years and three (3) years respectively.* Thereafter members shall be appointed as aforesaid for a term of office of four years, except that all vacancies occurring during a term shall be filled for the unexpired term.

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A member shall hold office until his successor has been appointed and has qualified.

The appointing officer shall designate which of the members of the commission shall be the first chairman, but when the office of chairman of the commission becomes vacant thereafter, the commission shall elect a chairman from among its members. The term of office as chairman of the commission, unless otherwise prescribed by the legislative body of the city, shall be for the calendar year, or for that portion thereof remaining after each such chairman is designated or elected.

A member of a commission may be removed by the mayor with the consent of the legislative body of the city."

Section 4. Section 11-3707, R.C.M. 1947, is amended to read as follows:

"**11-3707. Commission a public body — powers specified.** Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental function, and subject to the limitations imposed by this act, shall have the following powers in addition to the others herein granted:

(a) To sue and be sued; to have a seal; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(b) To make, and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this act to carry into effect the powers and purposes thereof.

(c) To select and appoint or remove such officers, agents, counsel and employees, permanent and temporary, as it may require, and to determine their qualifications, duties and compensation. The powers of the commission under this subsection (c) shall be subject to all limitations and rights applicable to similar employment by the city, unless the legislative body, by resolution, shall otherwise determine.

(d) For the purpose of off-street parking, to purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise or otherwise, any real or personal property, or any interest therein, together with any improvements thereon; to acquire by the exercise of the power of eminent domain any property in accordance with the applicable provisions of the law of eminent domain, except that no property of a state public body may be acquired without its consent, upon approval of the city council; to sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest therein, provided such transactions are for off-street parking purposes; to lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights of way necessary or convenient therefor; to insure or provide for the insurance of any real or personal property or operations of the commission against risks or hazards; to acquire, construct, rent, lease, maintain, and repair, such real and personal property, or any portion thereof either on behalf of the commission or as an agent of the city, including the leasing of the operation thereof, the leasing for incidental

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commercial purposes of surplus space or space which it is not economical to use for parking purposes, and as an incident to the operation of any parking facility, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, provided that the city or parking commission shall be prohibited from operating any such additional, secondary and incidental facilities; provided, however, that such incidental use or uses must be secondary to the primary use as a parking facility, and if a building is erected on such property for the purpose of parking motor vehicles, then such incidental use or uses of such building shall *be confined to the street level and/or below street level of such building, and such incidental use or uses at street level may occupy the entire surface area of the property less that area required for vehicular and pedestrian movement if at least two higher levels each of equal or greater area are devoted entirely to parking purposes; provided that other provisions notwithstanding, the commission or the city may lease air rights above such building*; provided, further, that the commission or the city shall lease such space to private operators *at rates comparable to the existing market rate for similar taxable space at the location*; to receive, control, and order the expenditure of, any and all moneys and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision, (i) all revenues derived from operations of the commission, (ii) all money appropriated or made available by the city pursuant to section 11-3707, or otherwise, (iii) the proceeds of all financial aid or assistance by the city, federal or state governments, (iv) the proceeds of assessments levied, (v) the proceeds of all revenue bonds issued pursuant to this act by the city for parking facilities.

(e) To regulate on-street parking where it remains in use, in coordination with off-street parking, subject to traffic regulations imposed by the state; such parking regulations may include, without limiting the generality of this provision, the determination of (i) parking locations, (ii) variable parking durations, (iii) variable parking rate schedules, and (iv) enforcement policies and procedures.

(f) To invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

(g) To exercise all or any part or combination of the powers herein granted.

(h) To do and perform any and all other acts and things necessary, convenient, desirable or appropriate to carry out the provisions of this act."

Section 5. Section 11-3708, R.C.M. 1947, is amended to read as follows:

"**11-3708. Acquisition of existing parking facilities.** No existing parking facility shall be acquired by the exercise of the power of eminent

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domain by a commission or the city except after public hearing following notice of the date, time, place, and purpose of such hearing published once not less than ten nor more than twenty days prior to the date of such hearing."

Approved March 19, 1975.

CHAPTER NO. 78

AN ACT TO ALLOW THE CREATION OF A LIBRARY DEPRECIATION RESERVE FUND BY EITHER CITY OR COUNTY GOVERNMENT OR BOTH OF THEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 44-229 that reads as follows:

44-229. Library depreciation reserve fund authorized. The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements and equipment necessary to maintain and improve city, county, or city-county library services.

Section 2. There is a new R.C.M. section numbered 44-230 that reads as follows:

44-230. Moneys for library depreciation reserve fund. Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include, but are not limited to, city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

Section 3. There is a new R.C.M. section numbered 44-231 that reads as follows:

44-231. Investment of fund. The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

Approved March 19, 1975.

CHAPTER NO. 79

AN ACT TO AMEND SECTION 70-418, R.C.M. 1947, TO REMOVE THE FIFTEEN DOLLAR LIMITATION FOR TELEVISION DISTRICTS.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 70-418, R.C.M. 1947, is amended to read as follows:

"**70-418. Budget for district—levy and certification of tax.** The board of trustees shall, from said list so prepared by the county assessor, remove therefrom the names of any persons who have claimed exemption under this act and shall prepare a budget for the expenses for the next year, which budget together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this act shall be presented by September 1 to the board of county commissioners who shall levy the tax requested by said trustees; provided however, the board of county commissioners shall levy such tax in accordance with the request herein mentioned, which said tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected."

Approved March 19, 1975.

CHAPTER NO. 80

AN ACT REDEFINING THE OFFENSE OF PROSTITUTION TO INCLUDE BOTH THE PAYER AND THE RECIPIENT OF PAYMENT; AMENDING SECTION 94-5-602, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-5-602, R.C.M. 1947, is amended to read as follows:

"**94-5-602. Prostitution.** (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, *whether such compensation is received or to be received, or paid or to be paid.*

(2) A person convicted of prostitution shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both."

Approved March 19, 1975.

CHAPTER NO. 81

AN ACT TO AMEND THE OPEN CUT MINING ACT TO PROVIDE AN EXEMPTION OF THE FEES AND BONDS FOR THE STATE OF MONTANA AND ITS SUBDIVISIONS.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 50-1516.1 that reads as follows:

50-1516.1. The provisions of this chapter relating to fees or bonds shall not apply to the state of Montana, counties, cities or towns.

Approved March 19, 1975.

CHAPTER NO. 82

AN ACT REQUIRING AN INSURER WHO CANCELS OR REFUSES TO RENEW A HOMEOWNERS OR HOME FIRE INSURANCE POLICY TO GIVE THE INSURED A STATEMENT OF THE REASON THEREFOR; AMENDING SECTIONS 40-4415 AND 40-4416, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4415, R.C.M. 1947, is amended to read as follows:

"**40-4415. Written notice required for cancellation or nonrenewal of insurance policies on homes.** No insurer shall cancel or refuse to renew any policy *insuring private residences including but not limited to fire, homeowner, theft or liability insurance* on any home occupied by the insured as a domicile without first giving to the insured thirty (30) days' notice in writing, *including in the notice a statement of the specific reason or reasons for cancelling or not renewing the policy.*

Section 2. Section 40-4416, R.C.M. 1947, is amended to read as follows:

"**40-4416. Penalty for cancellation or nonrenewal of insurance policies on homes without required notice.** Violation of section *40-4415* is punishable under section 40-2617, R.C.M., 1947 (general penalty)."

Approved March 19, 1975.

CHAPTER NO. 83

AN ACT TO WAIVE THE FIVE (5) YEAR RESIDENCY AND PRACTICE REQUIREMENT FOR THE INITIAL APPOINTMENT OF A LICENSED DOCTOR OF OSTEOPATHY TO THE MONTANA STATE BOARD OF MEDICAL EXAMINERS; AMENDING SECTION 82A-1602.15, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 82A-1602.15, R.C.M. 1947, is amended to read as follows:

"**82A-1602.15. Montana state board of medical examiners — appointment — qualifications — term — removal.** (1) There is a Montana state board of medical examiners.

(2) The board consists of seven (7) members appointed by the governor, with the consent of the senate. Appointments made when the senate is not in session may be confirmed at the next senate session. The members are: six (6) members having the degree of doctor of medicine, and one (1) member having the degree of doctor of osteopathy. The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member shall have been licensed and shall have practiced medicine in this state for at least five (5) years, and shall have been a resident of this state for at least five (5) years*; however, the five (5) year requirement of practice and residency shall be waived for the initial term appointment of the member having the degree and license of doctor of osteopathy.*

(3) Each member shall serve for a term of seven (7) years. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct."

Approved March 19, 1975.

CHAPTER NO. 84

AN ACT PROVIDING FOR THE CERTIFICATION OF EMERGENCY MEDICAL TECHNICIANS; PROVIDING FOR THE ACTS OF CARE THEY MAY PERFORM; AND PROVIDING FOR THE ADOPTION OF RULES BY THE BOARD OF MEDICAL EXAMINERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-7003 that reads as follows:

69-7003. Findings and purpose. The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

Section 2. There is a new R.C.M. section numbered 69-7004 that reads as follows:

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69-7004. Definitions. As used in this act:

(1) "Emergency medical technician — basic" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by said board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

(2) "Emergency medical technician — advanced" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in an advanced emergency medical technician training program approved by the state board of medical examiners and certified by the board as having demonstrated an advanced level of competence suitable to treat victims of severe injury or other serious emergent condition.

(3) "Board" means the board of medical examiners, department of professional and occupational licensing.

Section 3. There is a new R.C.M. section numbered 69-7005 that reads as follows:

69-7005. Acts allowed — basic. An emergency medical technician — basic may perform any of the following:

(1) Render emergency care, rescue, and resuscitation services;

(2) Provide emergency transportation;

(3) Perform cardiopulmonary resuscitation in the pulseless, nonbreathing patient; and

(4) Such other acts as the board may allow by rule.

Section 4. There is a new R.C.M. section numbered 69-7006 that reads as follows:

69-7006. Acts allowed — advanced. An emergency medical technician — advanced may perform any of the following:

(1) Render emergency care, rescue, and resuscitation services;

(2) While caring for patients during training at a hospital, ambulance, or other medical facility, administer parenteral medications under the direct supervision of a physician or a registered nurse;

(3) Perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient; and

(4) Such other acts as the board may allow by rule.

Section 5. There is a new R.C.M. section numbered 69-7007 that reads as follows:

69-7007. Additional acts by order. When an emergency medical technician — advanced has voice contact with a physician and upon the physician's order, or is functioning under formally adopted written stand-

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ing orders of a local hospital medical staff, the following acts may be performed based upon such direct or indirect order:

(1) Administer intravenous saline or glucose solutions;

(2) Perform gastric or tracheal suction by intubation;

(3) Administer parenteral injections of drugs approved by the board; and

(4) Such other acts as the board may allow by rule.

Section 6. There is a new R.C.M. section numbered 69-7008 that reads as follows:

69-7008. Rules. The board, after consultation with the department of health and environmental sciences, the department of intergovernmental relations, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this act, including, but not limited to, training and certification of personnel, administration of drugs, and other acts as allowed herein.

Section 7. There is a new R.C.M. section numbered 69-7009 that reads as follows:

69-7009. Consent. No emergency medical technician may be subject to civil liability for failure to obtain consent in performing acts as authorized herein to any individual regardless of age where the patient is unable to give consent and there is no other person present legally authorized to consent; provided, that such acts are in good faith and without knowledge of facts negating consent.

Section 8. There is a new R.C.M. section numbered 69-7010 that reads as follows:

69-7010. Construction of act. Nothing in this act shall be construed to detract from the powers granted to the department of health and environmental sciences to regulate ambulance service as provided for in Title 69, chapter 36, R.C.M. 1947.

Approved March 19, 1975.

CHAPTER NO. 85

AN ACT TO AMEND SECTION 94-5-607, R.C.M. 1947, BY INCLUDING CONTRIBUTING TO THE DELINQUENCY OF A YOUTH AS ENDANGERING WELFARE OF CHILDREN, PROVIDING INCREASED PENALTIES FOR SECOND OFFENSE AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-5-607, R.C.M. 1947, is amended to read as follows:

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"**94-5-607. Endangering welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than sixteen (16) years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection or support.

(2) A parent, guardian, or other person commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a youth by:

(a) supplying or encouraging the use of intoxicating substances by a child;

(b) assisting, promoting, or encouraging a child to leave or abandon his place of residence without the consent of his parents or guardian, to enter a place of prostitution, to engage in sexual conduct, or to enter places exclusively for adults.

(3) A person convicted of endangering welfare of children shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. *A person convicted of a second offense of endangering welfare of children shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.*

(4) Evidence. On the issue of whether there has been a violation of the duty of care, protection, and support, the following in addition to all other admissible evidence, shall be admissible: cruel treatment, abuse, infliction of unnecessary and cruel punishment, abandonment, neglect, lack of proper medical care, clothing, shelter and food; evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Section 2. This act is effective on passage and approval.

Approved March 19, 1975.

CHAPTER NO. 86

AN ACT AMENDING SECTION 1-906, R.C.M. 1947, TO ALLOW THE USE OF SINKING FUNDS FOR THE USE, REPAIRS, MAINTENANCE, AND CAPITAL OUTLAYS OF AIRPORTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-906, R.C.M. 1947, is amended to read as follows:

"**1-906. Sinking funds for repair, maintenance and capital out-**

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lays. An airport authority may create a sinking fund and accumulate therein the sum of five million dollars ($5,000,000) together with interest thereon for the use, repairs, maintenance and capital outlays of an *airport.*"

Approved March 19, 1975.

CHAPTER NO. 87

AN ACT TO AMEND SECTION 75-6105.1, R.C.M. 1947, TO CHANGE THE NOTIFICATION DEADLINE FOR RENEWAL OF NONTENURE TEACHERS' ANNUAL CONTRACTS FROM APRIL 1 TO APRIL 15; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6105.1, R.C.M. 1947, is amended to read as follows:

"**75-6105.1. Notification of nontenure teacher re-election.** The trustees shall provide written notice to all nontenure teachers who have been reelected by the *fifteenth* day of April. Any nontenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within twenty (20) days after the receipt of the notice of reelection. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1975.

CHAPTER NO. 88

AN ACT TO AMEND SECTION 94-6-102, R.C.M. 1947, TO INCLUDE DAMAGE TO PUBLIC PROPERTY IN THE CRIMINAL MISCHIEF PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-6-102, R.C.M. 1947, is amended to read as follows:

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"**94-6-102. Criminal mischief.** (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages or destroys any property of another *or public property* without consent; or

(b) without consent tampers with property of another *or public property* so as to endanger or interfere with persons or property or its use; or

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any inclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of the offense of criminal mischief shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of one hundred fifty dollars ($150), or injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be imprisoned in the state prison for any term not to exceed ten (10) years."

Approved March 19, 1975.

CHAPTER NO. 89

AN ACT TO AMEND SECTION 93-1120, R.C.M. 1947, RELATING TO INVOLUNTARY RETIREMENT ALLOWANCES FOR JUDGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-1120, R.C.M. 1947, is amended to read as follows:

"**93-1120. Involuntary retirement allowance.** *(1)* Should a contributor be discontinued from service, not voluntarily, after having completed five (5) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit*; or*

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(2) Should a contributor be discontinued from service, not voluntarily, after having completed twelve (12) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit; or

(b) the member's annuity which shall be the actuarial equivalent of the contributor's aggregate contributions standing to his credit, plus the state annuity which shall be an amount which when added to the member's annuity will provide a total annuity equal to the allowance provided for in section 93-1118."

Approved March 19, 1975.

CHAPTER NO. 90

AN ACT AUTHORIZING THE ATTORNEY GENERAL TO ISSUE CONFIDENTIAL MOTOR VEHICLE LICENSE PLATES AND CERTIFICATES OF REGISTRATION TO BONA FIDE LAW ENFORCEMENT AGENCIES WITHIN THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-424 that reads as follows:

82-424. Attorney general authorized to issue confidential registrations. The attorney general is authorized to issue to bona fide law enforcement agencies, except the highway patrol, within the state of Montana license plates and certificates of registration, which shall be exempt from all requirements for public disclosure. The issuance of such confidential registrations shall be subject to the following:

(1) Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

(2) Such license plates and registration may be displayed and used only during and in the furtherance of official law enforcement investigations.

(3) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

(4) The registration records of each vehicle so registered shall be maintained by the department of justice.

(5) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

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(6) Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation the registrant shall within twenty-four (24) hours deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

(7) The attorney general may adopt rules necessary to implement the provisions of this act and to prevent the abuse or misuse of confidential registration plates.

Approved March 19, 1975.

CHAPTER NO. 91

AN ACT AMENDING SECTION 26-202.1(13), R.C.M. 1947, TO ALLOW LANDOWNERS TO TRAP BEAVER WITH A LANDOWNER'S PERMIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. Licenses — fees — classifications of licenses — fees and powers under licenses. (1) Class A license—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dollars ($5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

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(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5, Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars ($20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1 (2) (a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

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(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars ($10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in

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section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

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(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.

(17) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(18) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission."

Approved March 19, 1975.

CHAPTER NO. 92

AN ACT RELATING TO SIZE AND EQUIPMENT OF CABOOSES; ESTABLISHING MINIMUM SAFETY; AMENDING SECTION 72-622, R.C.M. 1947; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-622, R.C.M. 1947, is amended to read as follows:

"**72-622. Size and equipment of caboose — failures.** *(1) Cabooses* shall be at least twenty-four (24) feet in length, exclusive of platforms, and shall be provided with a door in each end and with cupolas, or bay windows, platforms, guard rails, grabirons, and steps for the safety of persons in alighting or getting on *cabooses. Cabooses shall be of metal frame construction and be sufficiently insulated to eliminate track and other related noise above eighty-five (85) decibels in any octave in the speech range. Other requirements for cabooses are:*

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(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall have at least two (2) four-wheel trucks with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of two and one-half (2 ½) inches and a minimum capacity of eighteen thousand (18,000) foot pounds, and shall comply with Association of American Railroad Standard M-901 or its equivalent.

(b) Electric lighting of at least forty (40) foot candles shall be provided for direct illumination of the caboose desk, reading areas and lavatory facilities. The caboose marker, or markers, shall be either reflectorized or capable of illumination when required.

(c) Only glass of the safety glass type shall be used in partitions, doors, windows or wind deflectors.

(d) All seats and seat backs shall conform to the safety standards designed by the U.S. department of transportation in its "Federal Motor Vehicle Safety Standards", Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs shall be rounded to prevent injury to employees.

(2) Where a failure occurs in required equipment or standards of maintenance after a caboose has commenced to move in service, the failure shall be reported in accordance with subsection (3) of this section. The railroad operating that caboose is not in violation of this act if the failure of equipment or standards of maintenance is corrected at the first point maintenance supplies are available, or in the case of repairs, the first point materials and repair facilities are available and repairs can reasonably be made. If, in any particular case, temporary exemption from any requirements of this act is considered necessary by a carrier concerned, the public service commission may consider the application of that carrier for temporary exemption and may grant an exemption when the application is accompanied by a full statement of the conditions existing and the reason for the exemption. Any exemption so granted will be limited to the particular case, and will be limited to a stated period of time.

(3) A register for the reporting of failures of the required equipment or standards of maintenance shall be maintained on all cabooses, and provisions for maintaining a record of reported failures for not less than the previous eighty (80) day period shall be established.

(4) The provisions of this act apply to all cabooses, except those used exclusively in yard service."

Section 2. Compliance with the provisions of this act shall be completed within five (5) years of its passage and approval.

Approved March 19, 1975.

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CHAPTER NO. 93

AN ACT TO AMEND SECTION 26-201, R.C.M. 1947, TO CLASSIFY BURBOT, CHANNEL CATFISH, PALLID STURGEON, AND SHOVELNOSE STURGEON AS GAME FISH.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-201, R.C.M. 1947, is amended to read as follows:

"**26-201. Definitions.** For the purposes of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus

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micropterus (bass); all species of the genus polyodon (paddlefish); all species of the *family acipenseridae* (sturgeon); *all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).*

Wild buffalo. Buffalo or bison which have not been reduced to captivity."

Approved March 19, 1975.

CHAPTER NO. 94

AN ACT TO AMEND SECTION 40-4804, R.C.M. 1947, TO INCREASE TO TWENTY-FIVE THOUSAND DOLLARS THE AMOUNT WHICH A FARM MUTUAL INSURER MAY RETAIN ON A SINGLE RISK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4804, R.C.M. 1947, is amended to read as follows:

"**40-4804. Limit of risk.** (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten per cent (10%) of the admitted assets of the insurer or *twenty-five* thousand dollars *($25,000)*, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils, includes all properties insured by the same insurer which are reasonably susceptible to loss or damage from the same fire or the same occurrence of such other hazard insured against."

Approved March 19, 1975.

CHAPTER NO. 95

AN ACT TO AMEND SECTION 82A-1602.17, R.C.M. 1947, TO PROVIDE THAT APPOINTED MEMBERS OF THE BOARD OF NURSING HOME ADMINISTRATORS SHALL SERVE STAGGERED TERMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1602.17, R.C.M. 1947, is amended to read as follows:

"**82A-1602.17. Board of nursing home administrators — appointment — qualifications — term — removal.** (1) There is a board of nursing home administrators.

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(2) The board consists of five (5) voting members appointed by the governor. No more than two (2) members shall be nursing home administrators. The other three (3) members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients. No two (2) of the latter shall be from the same profession and none may have a financial interest in a nursing home.

(3) The director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, are ex officio, nonvoting members of the board.

(4) The appointees shall be selected from a list of three (3) nominees submitted for each appointee by the board of directors of the Montana nursing home association, inc.

(5) Each appointed member shall serve for a term of five (5) years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term from a list of three (3) names submitted by the board of directors of the Montana nursing home association, inc.

(6) Appointive members may be removed by the governor only for cause.

(7) The first board shall be appointed as follows:

(a) one non nursing home administrator representative for one (1) year,

(b) one non nursing home administrator representative for two (2) years,

(c) one nursing home administrator for three (3) years,

(d) one non nursing home administrator representative for four (4) years, and

(e) one nursing home administrator for five (5) years."

Section 2. **Dissolution of present board.** The present board of nursing home administrators is dissolved.

Section 3. **Appointment to the board.** The governor shall appoint present members of the board, with the person's consent, to constitute membership of the new board. The length of term of each member shall be determined by lot, within the requirements of section 1, subsection (7) of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1975.

CHAPTER NO. 96

AN ACT TO AMEND SECTION 66-603, R.C.M. 1947, TO PROVIDE

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THAT THE BOARD OF PODIATRY EXAMINERS MAY ALLOW FOR EQUIVALENT TIME IN QUARTER OR SEMESTER HOURS OF INSTRUCTION IN THE CONSIDERATION OF A PODIATRIST'S APPLICATION, TO PROVIDE THAT THE BOARD MAY GRANT LICENSURE TO AN APPLICANT WHO HAS SUCCESSFULLY COMPLETED HIS NATIONAL PODIATRY BOARD EXAMINATION AFTER A PERSONAL INTERVIEW.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-603, R.C.M. 1947, is amended to read as follows:

"**66-603. Examinations — schools — fees — nonresident practitioners — national podiatry board examinations.** Examinations shall be held at places and *times* the board directs. Persons who wish to begin the practice of podiatry in this state, shall make application on a form authorized by the state board of medical examiners and furnished by the department, for a license to practice podiatry. *The license may* be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least *four (4)* years *or equivalent time in quarter or semester hours* of instruction in an accredited *college* of podiatry recognized as being in good standing by the board, *and successfully passed the examination.* A license without written examination may be *granted* to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license *and practiced* for at least two (2) *preceding* years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars ($50) to the department. *A license may be granted, at the discretion of the board and upon payment of fifty dollars ($50) to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board.*"

Approved March 19, 1975.

CHAPTER NO. 97

AN ACT PROVIDING THAT SUBMISSION OF A NEGOTIATED SETTLEMENT TO THE LEGISLATURE MAY MEET STATE GOVERNMENT'S REQUIREMENT OF NEGOTIATING IN GOOD FAITH; AMENDING SECTION 59-1605, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1605, R.C.M. 1947, is amended to read as follows:

"**59-1605. Unfair labor practices of employer or labor organization.** (1) It is an unfair labor practice for a public employer to:

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(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 3 [59-1603] of this act;

(b) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under section 12 (3), an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(c) discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; however, nothing in this act or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require that an employee who is not or does not become a union member shall be required as a condition of employment to have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(d) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act;

(e) refuse to bargain collectively in good faith with an exclusive representative.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right guaranteed in subsection (1) of section 3 of this act, or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(b) refuse to bargain collectively in good faith with a public employer, if it has been designated as the exclusive representative of employees;

(c) use agency shop fees for contributions to political candidates or parties at state or local levels.

(3) For the purpose of this act, to bargain collectively is the performance of the mutual obligation of the public employer, or his designated representatives, and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(4) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget, or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

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(5) This act does not limit the authority of the legislature, any political subdivision or the governing body, relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment."

Approved March 19, 1975.

CHAPTER NO. 98

AN ACT PROVIDING FOR DETERMINATION AND COLLECTION OF CIVIL PENALTIES UNDER THE CLEAN AIR ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-3921.1 that reads as follows:

69-3921.1. Civil penalties. (1) Any person who violates any provision of this chapter, or any rule enforced thereunder or any order made pursuant thereto, shall be subject to a civil penalty not to exceed one thousand dollars ($1,000). Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in section 69-3921.

(2) Action under subsection (1) of this section is not a bar to enforcement of this chapter, or of rules or orders made under it, by injunction or other appropriate civil remedies.

(3) Monies collected hereunder shall be deposited in the state general fund.

Approved March 24, 1975.

CHAPTER NO. 99

AN ACT TO AMEND SECTION 91A-3-1004, R.C.M. 1947, TO ALLOW THE FILING OF A RECEIPT FROM THE COUNTY TREASURER SHOWING THAT THE INHERITANCE TAX HAS BEEN PAID.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-3-1004, R.C.M. 1947, is amended to read as follows:

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"91A-3-1004. **Department of revenue certificate showing taxes paid or receipt of county treasurer — prerequisite of closing estate.** In all probate proceedings under this code before final distribution to successors is made and before any petition is granted under sections 91A-3-1001, 91A-3-1002, or 91A-3-1003, there shall have been filed with the clerk a certificate from the department of revenue *or a receipt from the county treasurer* stating that any inheritance tax due on the assets of the estate has been paid. This section shall not prohibit such partial distribution as may become necessary in the course of administration."

Approved March 24, 1975.

CHAPTER NO. 100

AN ACT ESTABLISHING A SALINE SEEP CONTROL PROGRAM WITHIN THE DEPARTMENT OF STATE LANDS; PROVIDING EFFECTIVE AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statement of policy.** The legislature recognizes that saline-alkali damage to land and water resulting from agricultural practices or other water concentration practices in this state is a serious problem warranting legislative action to support research and implementation of solutions to prevent, reduce and correct saline alkali damage.

Section 2. **Definitions.** As used in this act unless the context requires otherwise:

(1) "Saline-alkali damage" means the accumulation or concentration of salts and related minerals in soil or water, resulting from agricultural use of land, to such an extent that the productivity of the land or the quality of related water supplies has suffered or is likely to suffer significant deterioration.

(2) "Department" means the department of state lands.

(3) "Agricultural practices" means any use of land for the production of crops, raising of livestock, or wildlife, including dryland and irrigated crop production, range and irrigated livestock grazing, construction of water retention, delivery, or associated structures.

Section 3. **Duties and responsibilities of the department.** The department shall develop and implement a program for the control of saline-alkali damage. The department shall:

(1) Allocate grants or contracts to public and private organizations, using such funds as the legislature may appropriate, in order to conduct necessary research, education or other activities to accomplish the following objectives:

(a) implementation of necessary agricultural practices for the prevention, reduction or correction of saline-alkali damage.

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(b) development and evaluation of agricultural practices and technology which will prevent or correct saline-alkali damage.

(c) appraisal and monitoring of the extent, nature and magnitude of saline-alkali damage.

(d) development of vegetation species useful for the prevention, reduction or correction of saline-alkali damage.

(e) development of technology useful for the detection of saline-alkali damage and its causes.

(2) Encourage or develop legislation, policies and programs for local, state and federal government which will aid in the prevention, reduction or correction of saline-alkali damage.

(3) Identify potential sources of gifts, grants and donations and actively seek such funding for special and general research, information, education, and all other activities consistent with the purposes of this act.

(4) Take or initiate any other lawful action consistent with the purpose of this act in order to prevent, reduce or correct saline-alkali damage.

(5) Conduct such research or studies as are necessary to accomplish the purposes of this act.

(6) Develop or cause to be developed short-range and long-range plans for the control, prevention, reduction and correction of saline-alkali damage.

Section 4. **Advisory council.** The governor may appoint an advisory council to assist the department in the discharge of its duties and responsibilities. If appointed, the council shall be composed as follows:

(1) Five (5) members shall be selected from areas of the state with significant salinity damage problems.

(2) Four (4) members shall be representatives of the following state agencies: Montana state university, Montana bureau of mines and geology, the department of natural resources and conservation, and the department of agriculture.

Section 5. **Effective and termination dates.** This act shall become effective upon passage and approval and shall terminate July 1, 1977, unless further extended by law.

Approved March 24, 1975.

CHAPTER NO. 101

AN ACT TO PERMIT EXISTING COUNTY, CITY-COUNTY, OR CITY PLANNING BOARDS TO FORM JOINT OR CONSOLIDATED PLANNING BOARDS BY INTERLOCAL AGREEMENT.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 11-3815.1, R.C.M. 1947, that reads as follows:

11-3815.1. Joint or consolidated planning boards. (1) Any existing county, city-county, or city planning board may form a joint or consolidated planning board with any other existing county, city-county, or city planning board or with any combination of these boards.

(2) The manner of combination shall be by interlocal agreement of the cities, counties and towns represented on the existing planning boards pursuant to Title 16, chapter 49, R.C.M. 1947.

(3) The interlocal agreement shall:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties and manner of sharing costs of the combined board which may be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing county, city-county, and city planning boards shall be dissolved, and the consolidated boards shall have all of the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning board shall not be dissolved and the joint board shall have such rights, duties, powers, and obligations as are set forth in the interlocal agreement.

Approved March 24, 1975.

CHAPTER NO. 102

AN ACT MAKING THE POSITION OF COUNTY ATTORNEY IN CERTAIN COUNTIES A FULL-TIME POSITION; SETTING THE QUALIFICATIONS THEREFOR; AMENDING SECTION 25-605, R.C.M. 1947, BY PROVIDING A SALARY THEREFOR; PROHIBITING CERTAIN DEPUTIES FROM ENGAGING IN THE PRIVATE PRACTICE OF LAW; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 16-3106 that reads as follows:

16-3106. Certain county attorneys prohibited from private practice of law. In each county with a population in excess of thirty thousand (30,000) the county attorney is prohibited from engaging in the private

practice of law or sharing directly or indirectly in the profits of any private practice of law, except that he may represent himself and his immediate family.

Section 2. There is a new R.C.M. section numbered 16-3107 that reads as follows:

16-3107. Qualifications. No person is eligible for the position of county attorney in counties which have a population in excess of thirty thousand (30,000) unless he is a citizen of the United States, who has resided in the state two (2) years immediately before taking office, and has been admitted to the practice of law for at least five (5) years prior to the date of election or appointment.

Section 3. Section 25-605, R.C.M. 1947, is amended to read as follows:

"25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A
Below 3,000	$3,520
3,000 to 3,999	$3,620
4,000 to 4,999	$3,700
5,000 to 5,999	$3,780
6,000 to 6,999	$3,880
7,000 to 7,999	$4,130
8,000 to 8,999	$4,200
9,000 to 9,999	$4,300
10,000 to 12,499	$4,370
12,500 to 14,999	$4,460
15,000 to 17,499	$4,550
17,500 to 19,999	$4,630
20,000 to 24,999	$4,720
25,000 to 29,999	$4,800
30,000 to 39,999	$4,890
40,000 to 49,999	$5,010
50,000 to 59,999	$5,190
60,000 to 69,999	$5,370
70,000 to 79,999	$5,520
80,000 to 89,999	$5,690
90,000 to 99,999	$5,870
100,000 and over	$6,050

Taxable Valuation of County	Salary Col. B
Below $2,000,000	$3,520
$2,000,000 to 2,999,999	$3,620
3,000,000 to 3,999,999	$3,700
4,000,000 to 4,999,999	$3,780
5,000,000 to 5,999,999	$3,880
6,000,000 to 6,999,999	$4,130
7,000,000 to 7,999,999	$4,200
8,000,000 to 9,999,999	$4,300
10,000,000 to 11,999,999	$4,370
12,000,000 to 13,999,999	$4,460
14,000,000 to 15,999,999	$4,550
16,000,000 to 17,999,999	$4,630
18,000,000 to 19,999,999	$4,720
20,000,000 to 22,499,999	$4,800
22,500,000 to 24,999,999	$4,890
25,000,000 to 29,999,999	$5,010
30,000,000 to 34,999,999	$5,190
35,000,000 to 39,999,999	$5,370
40,000,000 to 44,999,999	$5,520
45,000,000 to 49,999,999	$5,690
50,000,000 to 54,999,999	$5,870
55,000,000 to 59,999,999	$6,050
60,000,000 to 64,999,999	$6,050
65,000,000 to 69,999,999	$6,050
70,000,000 to 74,999,999	$6,050
75,000,000 to 79,999,999	$6,050
80,000,000 to 84,999,999	$6,050
85,000,000 to 89,999,999	$6,050
90,000,000 to 94,999,999	$6,050
95,000,000 to 99,999,999	$6,050
100,000,000 and over	$6,050

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The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars ($400) per year and county sheriffs and county attorneys shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of one thousand two hundred dollars ($1,200) per year. Notwithstanding the above, in each county with a population in excess of thirty thousand (30,000) *the salary of the county attorney shall be twenty-five thousand dollars ($25,000) per year.*"

Section 4. There is a new R.C.M. section numbered 16-3108 that reads as follows:

16-3108. Certain deputies prohibited from private practice. Any deputy county attorney in a county with a population in excess of thirty thousand (30,000) who is paid seventy percent (70%) or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except as to those matters in which he has a direct interest.

Section 5. **Effective date.** The effective date of this act is July 1, 1975, provided that any county attorney now serving in a county with a population in excess of thirty thousand (30,000) may elect to complete his present term of office at the salary as presently set by law and retain the right to engage in the private practice of law.

Approved March 24, 1975.

CHAPTER NO. 103

AN ACT TO AMEND SECTIONS 75-5902, 75-5907 AND 75-5908, R.C.M. 1947, TO INCREASE THE NUMBER OF SCHOOL TRUSTEES IN A THIRD CLASS ELEMENTARY DISTRICT FROM THREE (3) TO FIVE (5) UPON THE MAJORITY VOTE OF THE BOARD OF TRUSTEES AND PROVIDE FOR THEIR ELECTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5902, R.C.M. 1947, is amended to read as follows:

"**75-5902. Number of trustee positions.** The number of trustee positions in a district shall vary in the following manner according to the type of district:

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(1) The number of trustee positions in each elementary district shall vary according to the district's classification, as established by section 75-6503;

(a) there shall be seven (7) trustee positions in a first class elementary district;

(b) there shall be five (5) trustee positions in a second class elementary district; or

(c) there shall be three (3) trustee positions in a third class elementary district, *however upon the majority vote of the board of trustees, the number may be increased to five (5) trustee positions at the next trustee election, provided that notice of such action of the board of trustees be published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of such trustee election.*

(2) The trustees of a high school district, except a high school district operating a county high school, shall be composed of:

(a) the trustees of the elementary district where the high school building is located, or, if there is more than one (1) elementary district where high school buildings are located, the trustees of the elementary district designated by the high school boundary commission; and

(b) the additional trustee positions determined in accordance with section 75-5903.

(3) The trustees of a high school district operating a county high school shall be composed of seven (7) trustee positions."

Section 2. Section 75-5907, R.C.M. 1947, is amended to read as follows:

"**75-5907. Legislative intent to elect less than majority of trustees.** It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees shall not regularly expire and be subject to election on the same regular school election day. Therefore, in elementary districts, there shall not be more than three (3) trustee positions in first class districts, two (2) trustee positions in second class districts, *or third class districts having five (5) trustee positions,* or one (1) trustee position in third class districts *having three (3) trustee positions* regularly subject to election at the same time. In high school districts there shall not be more than two (2) additional trustee positions in first or second class districts, or more than one (1) in third class districts regularly subject to election at the same time.

While it is the intention of the legislature that the terms of a majority of trustees of any district shall not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time:

(1) the creation of a new elementary district under the provisions of section 75-6518;

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(2) the consolidation of two (2) *or* more elementary districts to form an elementary district under the provisions of section 75-6506;

(3) the establishment of additional trustee positions of a high school district under the provisions of section 75-5904 or 75-5905;

(4) the change of a district's classification under the provisions of section 75-6503;

(5) the filling of a trustee position which has become vacant under the provisions of section 75-5917 or any other provision of law;

(6) *the establishment of additional elementary trustee positions under the provisions of section 75-5902(c); or*

(7) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election."

Section 3. Section 75-5908, R.C.M. 1947, is amended to read as follows:

"**75-5908. Determination of terms after creation or consolidation of elementary districts.** Whenever the trustees are elected at one (1) regular school election under the circumstances described in subsections (1) and (2) of section 75-5907, the members who are elected shall draw by lot to determine their terms of office. Such terms of office by trustee position shall be:

(1) three (3) for three (3) years, two (2) for two (2) years, and two (2) for one (1) year in a first class elementary district;

(2) two (2) for three (3) years, two (2) for two (2) years, and one (1) for one (1) year in second class elementary *districts and third class elementary districts having five (5) trustee positions*; or

(3) one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year in a third class elementary district *having three (3) trustee positions*."

Approved March 24, 1975.

CHAPTER NO. 104

AN ACT AMENDING SECTION 53-107, R.C.M. 1947, TO ESTABLISH THE PRESUMPTION THAT A MOTOR VEHICLE IS HELD IN JOINT TENANCY WHEN THE NAME OF MORE THAN ONE PERSON IS LISTED AS AN OWNER ON THE CERTIFICATE OF TITLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-107, R.C.M. 1947, is amended to read as follows:

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"**53-107. Certificates of registration and ownership — contents, issuance, entry, assignment of numbers — owner's registration receipt to be signed, carried and exhibited on demand.** Upon completion of the application for registration, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Certificate of Registration and Tax Receipt," one (1) of which shall be marked "File copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership subject to the provisions of section 53-110. Said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner, *or the names and addresses of joint owners,* and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

File copy of owner's certificate of registration receipt to be signed, carried, and exhibited on demand. Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department.

The term "motor vehicle" includes automobile, truck, motorcycle-type vehicle, and semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identifi-

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cation number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof by affidavit, of such stamping is filed with him.

Any person violating this section shall be deemed guilty of a misdemeanor and shall be punished by a fine, of not exceeding twenty-five dollars ($25.00)."

Approved March 24, 1975.

CHAPTER NO. 105

AN ACT TO AMEND SECTION 87-136, R.C.M. 1947, BY CHANGING THE WORD "COMMISSION" TO "DIVISION" AND BY CHANGING THE WORDS "CHAIRMAN OF THE COMMISSION" TO "ADMINISTRATOR" AND BY PROVIDING FOR WITHHOLDING FINAL PAYMENT BY CONTRACTORS TO SUBCONTRACTORS UNTIL THE SUBCONTRACTORS HAVE PAID CONTRIBUTIONS DUE THE EMPLOYMENT SECURITY DIVISION, MONTANA STATE DEPARTMENT OF LABOR AND INDUSTRY; AND PROVIDING FOR CERTIFICATION OF COMPLIANCE TO BE ISSUED BY THE DIVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-136, R.C.M. 1947, is amended to read as follows:

"87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes. *(1)* If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the *division*, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state. Action for the collection of contributions due shall be brought within five (5) years after the due date of such contributions, otherwise to be barred as provided in section 93-2604.

(2) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The *division* is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemploy-

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ment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties, if any, due such state; in any such case the *administrator* may through his attorney or attorneys institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this act. A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority.

(3) Any contractor, who is or becomes an employer under the provisions of this act, who contracts with any subcontractor, who also is or becomes an employer under the provisions of this act, shall withhold sufficient money on the contract to guarantee that all contributions, penalties, and interest are paid upon completion of the contract. It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this act, to furnish the contractor with a certification issued by the employment security division, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this act. Failure to comply with the provisions of this section shall render the contractor directly liable for all contributions, penalties and interest due from the subcontractor on the particular job and the administrator has all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for the contractor."

Approved March 24, 1975.

CHAPTER NO. 106

AN ACT TO CREATE A NEW TITLE IN THE REVISED CODES OF MONTANA DEALING WITH LOCAL GOVERNMENT.

WHEREAS, the existing state statutes governing local government are confused, contradictory, scattered, and repetitive, resulting in delay or inaction in response to pressing local problems; and

WHEREAS, the state commission on local government has been directed to prepare a revised code of local government laws, it is necessary to create a new title to provide a framework for the legislation which the commission will propose.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a Title 47A in the Revised Codes of Montana, 1947, which is entitled: "LOCAL GOVERNMENT CODE."

Section 2. Title 47A, R.C.M. 1947, consists of nine (9) Parts which are entitled:

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"Part 1. General Provisions and Definitions.

Part 2. Local Government Formation.

Part 3. Local Government Structure, Organization, and Operation.

Part 4. Rules for Construction of Powers and Duties of Local Governments.

Part 5. Powers of General Power Local Governments.

Part 6. Services of General Power Local Governments.

Part 7. Powers and Limitations of Self-Government Local Governments.

Part 8. Duties of Local Governments as Agents of the State.

Part 9. Local Government Finances."

Approved March 24, 1975.

CHAPTER NO. 107

AN ACT REQUIRING ALL EMPLOYERS TO GRANT TO EMPLOYEES WHO ARE ELECTED OR APPOINTED TO PUBLIC OFFICE A LEAVE OF ABSENCE OF NOT MORE THAN ONE HUNDRED EIGHTY (180) DAYS PER YEAR WHILE PERFORMING PUBLIC SERVICE; AND REQUIRING EMPLOYEES TO MAKE ARRANGEMENTS TO RETURN TO WORK WITHIN TEN (10) DAYS FOLLOWING THE COMPLETION OF SUCH PUBLIC SERVICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 59-1011 that reads as follows:

59-1011. Mandatory leave of absence for employees holding public office — return requirements. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed one hundred eighty (180) days per year, while they are performing public service.

(2) Employees granted a leave shall make arrangements to return to work within ten (10) days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

Section 2. There is a new R.C.M. section numbered 59-1012 that reads as follows:

59-1012. Unemployment not charged to employer. Any unemployment benefits paid to any person by application of this act shall not be charged against any employer under the unemployment compensation law.

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Approved March 24, 1975.

CHAPTER NO. 108

AN ACT TO AMEND SECTION 26-301 (8), R.C.M. 1947, TO PROVIDE THAT CERTAIN MOTOR VEHICLE RESTRICTIONS DO NOT APPLY TO FEDERAL LANDS UNLESS THE FEDERAL AGENCY SPECIFICALLY REQUESTS OR APPROVES STATE ENFORCEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-301, R.C.M. 1947, is amended to read as follows:

"**26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.** (1) It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any game birds, or migratory waterfowl, or game or fur-bearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or fur-bearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

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(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, *except in areas where more restrictive regulations apply or where the landowner has not granted such permission,* provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal

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or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the land owner and in possession of the hunter. *The restrictions in this subsection on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.*

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Approved March 24, 1975.

CHAPTER NO. 109

AN ACT TO AMEND SECTION 31-188, R.C.M. 1947, CHANGING THE METHOD OF DETERMINATION BY THE COURTS OF AN HABITUAL TRAFFIC OFFENDER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-188, R.C.M. 1947, is amended to read as follows:

"**31-188. When defendant certified for trial.** For the purpose of enforcing the provisions of this act, in any case in which the defendant is charged with operating a motor vehicle while his license to do so is suspended or revoked, or is charged with driving without a license, the court, *before* hearing such charge, shall ascertain whether the defendant has been adjudged an habitual traffic offender and by reason of that judgment is prohibited from operating a motor vehicle in this state. If the court determines that the defendant has been so adjudged and that that judgment remains in effect, the court shall certify the case to the district court of its jurisdiction for trial."

Approved March 24, 1975.

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CHAPTER NO. 110

AN ACT AMENDING SECTION 32-2188, R.C.M. 1947, TO REQUIRE BICYCLISTS TO RIDE IN SINGLE FILE UPON ROADWAYS NOT SET ASIDE EXCLUSIVELY FOR BICYCLE USE AND EXCEPT WHEN PASSING ANOTHER BICYCLIST.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2188, R.C.M. 1947, is amended to read as follows:

"**32-2188. Riding on roadways and bicycle paths.** (a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall ride *in single file* except on paths or parts of roadways set aside for the exclusive use of bicycles. *A person riding a bicycle may overtake and pass another bicycle when safe to do so and when other traffic is not obstructed by so doing.*

(c) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway."

Approved March 24, 1975.

CHAPTER NO. 111

AN ACT TO PROVIDE AN ALTERNATIVE METHOD OF CODIFYING ORDINANCES; AMENDING SECTION 11-1102, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1102, R.C.M. 1947, is amended to read as follows:

"**11-1102. Ordinances — how prepared.** (1) All ordinances, bylaws and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk called "The Ordinance Book," and numbered in the order in which they are passed *or codified by numerical decimal system.*

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt

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a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code, or part of a code, is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code, or part of a code, adopted.

(4) Ordinances take effect from and after their passage, except as otherwise ordered, and no ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances."

Approved March 24, 1975.

CHAPTER NO. 112

AN ACT TO MAKE UNLAWFUL THE USE OF JUNKED MOTOR VEHICLES FOR FLOOD CONTROL OF A STREAM OR FOR REINFORCEMENT OF THE BANKS OF A STREAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-6811 that reads as follows:

69-6811. Prohibition. It is unlawful to place junked motor vehicles, or the body portion of junked motor vehicles, between high water channel banks of any stream or to reinforce banks of a stream.

Section 2. There is a new R.C.M. section numbered 69-6812 that reads as follows:

69-6812. Penalty. A person who violates this act is guilty of a misdemeanor and upon conviction shall be fined not to exceed two hundred and fifty dollars ($250), imprisoned in the county jail for a term not to exceed thirty (30) days, or both.

Approved March 24, 1975.

CHAPTER NO. 113

AN ACT TO AMEND SECTIONS 26-201 AND 26-344, R.C.M. 1947, TO PROVIDE FOR A DEFINITION OF NONGAME WILDLIFE AND FUR-BEARING ANIMALS AND TO REGULATE THE INTRODUCTION OR TRANSPLANTING OF NONGAME WILDLIFE INTO THE STATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 26-201, R.C.M. 1947, is amended to read as follows:

"**26-201. Definitions.** For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, weasel, skunk and civet cat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish) and all species of the genus acipenser (sturgeon).

Wild buffalo. Buffalo or bison which have not been reduced to captivity.

Nongame wildlife. Any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state."

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Section 2. Section 26-344, R.C.M. 1947, is amended to read as follows:

"**26-344. Restrictions on use of fish as bait — commission must authorize introduction of fish or game.** The state fish and game commission shall have authority to prohibit the use of small fish as bait for catching fish in such waters as the commission shall designate. It shall have the power to promulgate such other regulations as are necessary to insure an adequate supply of fish in said waters, including the power to regulate fishing from boats or other floating devices and to regulate the use of fishing lures and/or baits in all waters of the state.

It shall be unlawful for any person or persons to transplant or introduce any fish or fish eggs into any body of water in the state, and it shall be unlawful for any person or persons to transplant or introduce any species of game birds, game *and fur-bearing* animals *and nongame wildlife* into the state of Montana without first having obtained authorization from the fish and game commission.

Any person found guilty of a violation of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for in section 26-324."

Approved March 24, 1975.

CHAPTER NO. 114

AN ACT AMENDING SECTION 25-311, R.C.M. 1947, TO ABOLISH MISCELLANEOUS FEES FOR JUSTICES OF THE PEACE; AND REPEALING SECTION 25-304, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-311, R.C.M. 1947, is amended to read as follows:

"**25-311. Remittance and retention of fees by justices of the peace.** Justices of the peace shall remit to the county treasurer the fees as set forth in section 25-310."

Section 2. Section 25-304, R.C.M. 1947, is repealed.

Approved March 24, 1975.

CHAPTER NO. 115

AN ACT AMENDING SECTION 70-113, R.C.M. 1947, TO REQUIRE THE PUBLIC SERVICE COMMISSION TO HOLD HEARINGS ON PROPOSED CHANGES IN SCHEDULES WHEN THERE ARE ADVERSE PARTIES, AND TO RENDER DECISIONS IN SUCH CONTESTED CASES IN CONFORMITY WITH THE ADMINISTRATIVE PROCEDURE ACT.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-113, R.C.M. 1947, is amended to read as follows:

"**70-113. Schedules of rates, tolls and charges.** Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except *as approved by the commission. Before it may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area, the commission shall publish a notice of the proposed change, conforming to the requirements of section 82-4209(2) in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice shall announce a hearing on the proposed change and shall inform interested persons how they may petition the commission to become parties to the hearing. The commission shall proceed to conduct the hearing under the Administrative Procedure Act. The consumer counsel may in his discretion petition to become a party to the hearing.*

Notwithstanding any provision of this Title to the contrary, the final decision of the commission in any matter decided after a hearing conducted pursuant to this section shall conform to the requirements of a decision in a contested case under the Administrative Procedure Act. The commission may temporarily approve an increase pending a hearing and final decision. If the final decision is to disapprove the increase the commission shall order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval."

Approved March 24, 1975.

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CHAPTER NO. 116

AN ACT REQUIRING THE ADOPTION OF RULES TO PROMOTE CONSERVATION AND EFFICIENT USE OF ENERGY IN THE STATE BUILDING CODE; AMENDING SECTIONS 69-2110 AND 69-2111, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2110, R.C.M. 1947, is amended to read as follows:

"**69-2110. Purposes of state building code.** The state building code shall be designed to effectuate the general purposes of this chapter and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials, consonant with accepted standards of design, engineering and fire prevention practices;

(2) permit to the fullest extent feasible, the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings; *and consistent with the conservation of energy by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;*

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction;

(4) ensure that buildings constructed with public funds are accessible to, and functional for, physically handicapped persons where practicable and feasible;

(5) encourage efficiencies of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical and illumination systems which promote the efficient use of energy."

Section 2. Section 69-2111, R.C.M. 1947, is amended to read as follows:

"**69-2111. Adoption of rules by department.** (1) The department shall adopt by reference nationally recognized building codes in whole or in part, amend and repeal rules relating to the construction of all build-

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ings or classes of buildings or the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings including provisions dealing with safety, sanitation *and conservation of energy.* The rules, when adopted as provided in this chapter, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable.

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the department.

(4) If a hearing has been held by the department of justice with respect to its duties contained in Title 82, chapter 12, the board of plumbers, the department of health and environmental sciences, or state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences, or state electrical board which conflicts with the state building code, the department shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected."

Approved March 24, 1975.

CHAPTER NO. 117

AN ACT AMENDING SECTION 59-1602, R.C.M. 1947, TO INCLUDE PROFESSIONAL INSTRUCTORS, TEACHERS, AND PARAPROFESSIONAL INSTRUCTORS EMPLOYED BY SCHOOL BOARDS AND DISTRICTS AS PUBLIC EMPLOYEES UNDER THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING ACT; AND REPEALING SECTIONS 59-1608.1, 59-1608.2, AND 75-6115 THROUGH 75-6128, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1602, R.C.M. 1947, is amended to read as follows:

"**59-1602. Definitions.** When used in this act:

(1) "public employer" means the state of Montana or any political subdivision thereof, including but not limited to, any town, city, county, district, school board, board of regents, public and quasi-public corpora-

tion, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees;

(2) "public employee" means a person employed by a public employer in any capacity, except elected officials, persons directly appointed by the governor, supervisory employees and management officials (as defined in subsection (3) and (4) below) or members or any state board or commission who serve the state intermittently, school district clerks and school administrators, registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;

(3) "supervisory employee" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(4) "management officials" means representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy;

(5) "labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment;

(6) "exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer;

(7) "board" means the board of personnel appeals provided for in section 82A-1014;

(8) "person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(9) "unfair labor practice" means any unfair labor practice listed in section 5 [59-1605];

(10) "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand the proximate relation of employer and employee;

(11) "appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board."

Section 2. There is a new R.C.M. section numbered 59-1617 that reads as follows:

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59-1617. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in section 59-1605 (3).

Section 3. Sections 59-1608.1, 59-1608.2, and 75-6115 through 75-6128, R.C.M. 1947, are repealed.

Approved March 24, 1975.

CHAPTER NO. 118

AN ACT TO PERMIT THE DEPARTMENT OF INSTITUTIONS TO CONTRACT WITH THE GOVERNING BODY OF AN INDIAN RESERVATION FOR RESIDENTIAL AND EDUCATIONAL SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 80-1419 that reads as follows:

80-1419. Department of institutions may contract with governing body of Indian reservation for services. The department of institutions may contract with the governing body of an Indian reservation within the state for residential and educational services:

(1) at Mountain View school, Pine Hills school, aftercare division, or other juvenile facility maintained by the department, for children who have been adjudicated delinquent by the tribal court; subject to the provisions of Title 80, chapter 14 and chapter 22; or

(2) at the Montana children's center for children who have been found by the tribal court to be dependent and neglected, subject to the provisions of Title 80, chapter 21.

Approved March 24, 1975.

CHAPTER NO. 119

AN ACT REQUIRING A PERSON ABOUT TO CONSTRUCT OR LOCATE A MAJOR INDUSTRIAL FACILITY OR OPEN A NEW STRIP MINE TO FILE AN EDUCATIONAL IMPACT STATEMENT WITH THE COUNTY SUPERINTENDENT OF SCHOOLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-8312 that reads as follows:

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75-8312. Educational impact statements defined — when required. When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in section 75-7104, or intends to open a new strip mine, as defined by section 50-1603, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility. The statement shall indicate: (1) the numbers of persons, and their anticipated residential distribution, to be employed during the construction or preparation, and during the operation of the major industrial facility;

(2) the numbers and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the numbers of school age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate.

Section 2. There is a new R.C.M. section numbered 75-8313 that reads as follows:

75-8313. Judicial enforcement. A district court, upon petition of a county, may enforce the preceding section with appropriate orders.

Approved March 24, 1975.

CHAPTER NO. 120

AN ACT DIRECTING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO DISTRIBUTE FUNDS APPROPRIATED FOR THE SUPPORT OF LOCAL GOVERNMENT STUDY COMMISSIONS TO MUNICIPALITIES AND COUNTIES; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Department to distribute local government study funds — schedule of disbursement.** On or before August 1 of fiscal years 1976 and 1977, the department of intergovernmental relations shall distribute to the treasurers of incorporated municipalities or counties, from the funds appropriated to the department for the support of local government study commissions, the amounts set out in the following table:

POPULATION OF MUNICIPALITY (1970 Census)	GRANT FY 1976	GRANT FY 1977
Less than 200	$ 200	$ 100
200 to 549	$ 500	$ 250

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550 to 1,999	$ 1,000	$ 500
2,000 to 4,999	$ 4,000	$ 2,000
5,000 to 10,999	$ 6,000	$ 3,000
11,000 and over	$10,000	$ 5,000

POPULATION OF COUNTIES (1970 Census)	GRANT FY 1976	GRANT FY 1977
Less than 2,000	$ 2,000	$ 1,000
2,000 to 4,999	$ 4,000	$ 2,000
5,000 to 8,999	$ 5,000	$ 2,500
9,000 to 12,999	$ 8,000	$ 4,000
13,000 to 19,999	$ 9,000	$ 4,500
20,000 and over	$10,000	$ 5,000

Section 2. **Applications for additional funds.** (1) The department of intergovernmental relations shall establish procedures by which the county local government study commissions of counties with a population of less than nine thousand (9,000) may apply for an additional one thousand dollars ($1,000) in state funds for fiscal year 1976 and five hundred dollars ($500) for fiscal year 1977.

(2) The application shall be in the form prescribed by the department of intergovernmental relations and shall contain, in addition to any information required by the department of intergovernmental relations, a statement showing a local government appropriation to the study commission that is in excess of the grant provided for in section 1 and a proposed budget showing the manner in which the funds applied for will be expended.

(3) No application may be approved for an amount that, together with the state grant provided for in section 1, exceeds the total appropriated by the local government for a study commission.

Section 3. This act is effective on passage and approval.

Approved March 24, 1975.

CHAPTER NO. 121

AN ACT PROHIBITING DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGIOUS CREED, NATIONAL ORIGIN, ANCESTRY, AGE, SEX, PHYSICAL OR MENTAL HANDICAP, OR MARITAL STATUS IN CREDIT TRANSACTIONS; AMENDING SECTIONS 64-305, 64-306, AND 64-307, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 64-305, R.C.M. 1947, is amended to read as follows:

"**64-305. Definitions.** As used in this act, unless the context requires otherwise:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in section 82A-1015.

(3) "Department" means the department of labor and industry provided for in Title 82A, chapter 10.

(4) "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, university, a business, nursing, professional, secretarial, technical or vocational school or an agent of an educational institution.

(5) "Employee" means any individual employed by an employer.

(6) "Employer" means an employer of one (1) or more persons but does not include a fraternal, charitable, or religious association or corporation, if the association or corporation is not organized for private profit; or to provide accommodation or services that are available on a nonmembership basis.

(7) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(8) "Financial institution" means a commercial bank, trust company, mutual savings bank, cooperative bank, homestead association, finance company, mutual savings and loan association or an insurance company.

(9) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(10) "Labor organization" means an organization and an agent of the organization, organized for the purpose, in whole or in part, of collective bargaining, dealing with employers concerning grievances, terms of conditions of employment, or of other mutual aid protection of employees.

(11) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning and impaired social competence.

(12) "National origin" means ancestry.

(13) "Person" means one (1) or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations.

(14) "Physical handicap" means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, wheelchair, or other remedial appliance or device.

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(15) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public including but not limited to a public inn, restaurant, eating house, hotel, roadhouse, place where food or spirituous or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, night club, trailer park, resort, campground, barber shop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, hospital, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

(16) "Credit" means the right granted by a creditor to a person to defer payment of a debt or to incur debt and defer its payment, or purchase property or services and defer payment therefor, including but not limited to the right to incur and defer debt which is secured by residential real property.

(17) "Creditor" means any person who regularly or as a part of his business arranges for the extension of credit for which the payment of a financial charge or interest is required whether in connection with loans, sale of property, or services, or otherwise.

(18) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale."

Section 2. Section 64-306, R.C.M. 1947, is amended to read as follows:

"64-306. Discriminatory practices described and prohibited. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, color, or national origin or because of his age, physical or mental handicap or sex when the reasonable demands of the position do not require an age, physical or mental handicap or sex distinction;

(b) a labor organization, because of a person's sex, age, physical or mental handicap, race, religion, color, or national origin, to exclude or expel him from its membership, apprenticeship, or training program, or to discriminate in any way against a member of, or an applicant to the labor organization or an employer or an employee;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment, which expresses, directly or indirectly, a limitation, specification or discrimination as to sex, age, physical or mental handicap, race, creed, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against a person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, or assisted in a proceeding under this act.

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The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights law and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

(2) It is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, religion, color, or national origin;

(b) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any of the services, goods, facilities, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, religion, sex, age, physical or mental handicap, color or national origin except when the distinction is based on reasonable grounds under rules adopted by the commission.

(3) It is an unlawful discriminatory practice for the owner, lessee, manager or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, religion, color, age, physical or mental handicap, or national origin, except when the distinction is based on reasonable grounds under rules adopted by the commission;

(b) to discriminate against a person because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds under rules adopted by the commission; or

(c) to make a written or oral inquiry or record of the sex, race, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds under rules adopted by the commission;

(d) a private residence designed for single family occupancy, in which sleeping space is rented to guests in the family home in which the landlord also resides, may be excluded from the provisions of this act.

(4) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance to permit an official or employee during the execution of his duties:

(a) to discriminate against the applicant because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term,

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condition or privilege relating to the obtainment or use of the institution's financial assistance.

(5) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, religion, sex, color, age, physical or mental handicap, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, religion, sex, color, age, physical or mental handicap, or national origin or that the patronage of a person belonging to a particular race, creed, sex, color, or certain age or national origin or possessing a physical or mental handicap, is unwelcome, or not desired or solicited.

(c) to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an elected officer of the executive branch provided for in article VI, section 1, of the Montana constitution, nor to the appointment by the governor of a director of a principal department provided for in article VI, section 7, of the Montana constitution.

(6) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, condition, and privileges of the institution because of race, color, age, physical handicap, or national origin or because of mental handicap unless based on reasonable grounds under rules adopted by the commission;

(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, religion, age, physical or mental handicap, sex, or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of race, color, religion, physical or mental handicap, or national origin.

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(7) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religious creed, national origin, ancestry, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record."

Section 3. Section 64-307, R.C.M. 1947, is amended to read as follows:

"64-307. Sex, age, physical or mental handicap, race, religion, color, origin no justification for discrimination. (1) Sex, age, physical or mental handicap, race, religion, color or national origin, either singly or in combination, may not comprise justification for discrimination in and of themselves unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

Age or mental handicap may represent a legitimate discriminatory criteria in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

(2) Separate lavatory, bathing or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy."

Approved March 25, 1975.

CHAPTER NO. 122

AN ACT PROVIDING FOR THE ELECTION OF TRUSTEES OF ALL HIGH SCHOOL DISTRICTS OPERATING A COUNTY HIGH SCHOOL, PROVIDING THAT NO MORE THAN TWO OF THE TRUSTEE POSITIONS ELECTED FROM THE DISTRICT IN WHICH THE COUNTY HIGH SCHOOL IS LOCATED OR NO MORE THAN ONE OF THE TRUSTEE POSITIONS ELECTED FROM THE DISTRICT OR DISTRICTS IN WHICH THE COUNTY HIGH SCHOOL IS NOT LOCATED SHALL BE SUBJECT TO ELECTION AT THE SAME TIME, PROVIDING FOR THE APPOINTMENT OF TRUSTEES TO FILL VACANT TRUSTEE POSITIONS, PROVIDING FOR THE COMPOSITION, ORGANIZATION AND OFFICERS OF BOARDS OF TRUSTEES OF HIGH SCHOOL DISTRICTS OPERATING COUNTY HIGH SCHOOLS AND REMOVING THE COUNTY SUPERINTENDENT AS SECRETARY TO A JOINT BOARD OF TRUSTEES; AMENDING SECTIONS 75-5906, 75-5907, 75-5918, 75-5924, 75-5927, 75-5928, R.C.M. 1947; AND REPEALING SECTIONS 75-5920, 75-5921, 75-5922, 75-5923, AND 75-5925, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5906, R.C.M. 1947, is amended to read as follows:

"75-5906. Election and term of office. Every trustee position pre-

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scribed by this Title shall be subject to election and the term of office for each position shall be three (3) years unless it is otherwise specifically prescribed by this Title."

Section 2. Section 75-5907, R.C.M. 1947, is amended to read as follows:

"**75-5907. Legislative intent to elect less than majority of trustees.** It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees shall not regularly expire and be subject to election on the same regular school election day. Therefore, in elementary districts, there shall not be more than three (3) trustee positions in first class districts, two (2) trustee positions in second class districts, or one (1) trustee position in third class districts regularly subject to election at the same time. In high school districts there shall not be more than two (2) additional trustee positions in first or second class districts, or more than one (1) in third class districts regularly subject to election at the same time. *In high school districts operating a county high school, there shall not be more than two (2) trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one (1) trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.*

While it is the intention of the legislature that the terms of a majority of trustees of any district shall not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time:

(1) the creation of a new elementary district under the provisions of section 75-6518;

(2) the consolidation of two (2) of more elementary districts to form an elementary district under the provisions of section 75-6506;

(3) the establishment of additional trustee positions of a high school district under the provisions of section 75-5904 or 75-5905;

(4) the change of a district's classification under the provisions of section 75-6503;

(5) the filling of a trustee position which has become vacant under the provisions of section 75-5917 or any other provision of law; or

(6) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election."

Section 3. Section 75-5918, R.C.M. 1947, is amended to read as follows:

"**75-5918. Filling vacated trustee position, appointee qualification and term of office.** Whenever a trustee position becomes vacant *in*

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any district except a third class district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment.

Whenever a trustee position becomes vacant in a third class district, the remaining members of the trustees shall declare such position vacant and notify the county superintendent of the vacancy. The county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent in not less than fifteen (15) days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified."

Section 4. Section 75-5924, R.C.M. 1947, is amended to read as follows:

"**75-5924. Membership of elected trustees of high school district operating county high school and nomination of candidates.** *The* trustees of a high school district operating a county high school shall be composed of the following:

(1) four (4) trustee positions filled by members residing in the elementary district where the county high school building is located; and

(2) three (3) trustee positions filled by members one of whom resides in each of the three (3) trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts and, unless it is impossible, such districts shall have coterminous boundaries with elementary district boundaries.

The provisions of section 75-5913 shall govern the nomination of candidates for the trustee election prescribed in this section."

Section 5. Section 75-5927, R.C.M. 1947, is amended to read as follows:

"**75-5927. Organization and officers.** The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees but not later than the third Saturday of April. In order to organize, the trustees of the district shall be given notice of the time and place where the organization meeting will be held and, at such meeting, they shall choose one of their number as the chairman. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district.

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The trustees of a high school district operating a county high school shall appoint a secretary, who shall be a member of the board.

The chairman of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this Title and any other duties that normally pertain to such officer."

Section 6. Section 75-5928, R.C.M. 1947, is amended to read as follows:

"**75-5928. Joint board of trustees organization and voting membership.** Whenever the trustees of a high school district operating a county high school and the trustees of the elementary district where the county high school building is located deem it to be within the best interests of the two districts, they may form a joint board of trustees for the purpose of co-ordinating the educational program of both districts. When a joint board of trustees is formed, all of the members of both districts' trustees shall be members of the joint board of trustees, and each member shall have the right to participate in the meetings but voting on matters considered by the joint board shall be limited by the provisions of this section.

At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. A secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three (3) successive ballots have resulted in a tie vote of the joint board of trustees.

The voting membership of the joint board of trustees shall be equalized between the trustee membership of the two participating districts. After the selection of the chairman and the secretary, if necessary, the voting membership shall be:

(1) all of the membership of the elementary district trustees unless one of its members is selected as secretary, in which case such member shall not be a voting member; and

(2) the members of the high school district trustees who are selected by such trustees as voting members of the joint board in a number equal to the number of voting members of the elementary district trustees as established under subsection (1) above. The names of the voting membership selected by the high school trustees shall be submitted in writing to the secretary of the board and shall be the only members of such district's trustees eligible to vote on joint board matters unless such list is revised in writing by the high school trustees.

Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote."

Section 7. Sections 75-5920, 75-5921, 75-5922, 75-5923, and 75-5925, R.C.M. 1947, are repealed.

Approved March 25, 1975.

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CHAPTER NO. 123

AN ACT ESTABLISHING A PROCEDURE FOR THE RELOCATION OF OVERHEAD UTILITY LINES IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 24-201 that reads as follows:

24-201. Definitions. As used in this act:

(1) "overhead utility line" means a facility for the transmission or distribution of electricity or telephone messages along wires or cables suspended above the ground between single or double poles and their respective anchors, and

(2) "agricultural improvement" includes, without limitation, sprinkler irrigation systems.

Section 2. There is a new R.C.M. section numbered 24-202 that reads as follows:

24-202. Petition for relocation of overhead line. An owner of agricultural land across which an overhead utility line has been constructed may petition the district court for an order for relocation of the line for the purpose of installing an agricultural improvement. The petition shall set forth the nature of the proposed agricultural improvement, the increase in productivity of the land anticipated to result from the improvement, and a feasible alternative route, across other land to be provided by the petitioner at no cost to the owner of the overhead utility line.

Section 3. There is a new R.C.M. section numbered 24-203 that reads as follows:

24-203. Hearing and order. The district court shall, upon notice to the owner of the overhead utility line, hear evidence bearing upon the matters presented in the petition. The court shall grant, or modify and grant as modified, the petition and order the owner of the line to relocate the line, if the evidence establishes a substantial improvement in agricultural productivity and the feasibility of the relocated route.

Section 4. There is a new R.C.M. section numbered 24-204 that reads as follows:

24-204. Costs of relocation. The costs of relocating an overhead utility line as ordered under section [3 of this act] shall be paid fifty percent (50%) by the utility and fifty percent (50%) by the owner of the land. However, if the person petitioning for the order fails for any reason to install the agricultural improvement within two (2) years following the date relocation is completed, he must reimburse the owner of the line the full cost of relocation, and the court has continuing jurisdiction over the parties for the purpose of ordering such reimbursement.

Approved March 25, 1975.

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CHAPTER NO. 124

AN ACT ALLOWING THE DIVISION OF WORKMEN'S COMPENSATION TO ORDER INSURERS TO PAY WORKMEN'S COMPENSATION BENEFITS SUBJECT TO A SUBSEQUENT HEARING, AND SUBJECT TO REIMBURSEMENT FOR NONLIABILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 92-617 that reads as follows:

92-617. Payments by insurer prior to a hearing — reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the division may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing; but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding forty-nine (49) days or for any period subsequent to the date of a hearing. If after a hearing it is held that the insurer was not liable for the compensation payments ordered by the division, the insurer has the right to be reimbursed for such payments by the claimant.

Approved March 25, 1975.

CHAPTER NO. 125

AN ACT TO AMEND SECTIONS 84-1402, 84-1404, 84-1405, 84-1406, 84-1408, AND 84-1417 PERTAINING TO THE COAL RETAILERS' LICENSE TAX; TO REPEAL SECTIONS 84-1409, 84-1412 AND 84-1414.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1402, R.C.M. 1947, is amended to read as follows:

"**84-1402. License taxes to retail coal — fees.** Every person who engages in or carries on the occupation or business in this state of retailing, or selling at retail, coal of any kind must, for the year 1921, and each year thereafter when engaged in such occupation or business, *pay to the state department of revenue a license tax, for engaging in and carrying on such business, in an amount* equal to five cents a ton for each and every ton of coal containing two thousand pounds sold by such person during such year and for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license *taxes* to the state of Montana under any law of this state."

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Section 2. Section 84-1404, R.C.M. 1947, is amended to read as follows:

"**84-1404. Payment of license taxes.** The said license *taxes* of five cents per ton shall be paid in quarterly installments for the quarters ending March 31st, June 30th, September 30th and December 31st in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license *taxes* becoming due for any quarter shall be paid to the state *department of revenue* within thirty days after the end of the quarter for which the same is due."

Section 3. Section 84-1405, R.C.M. 1947, is amended to read as follows:

"**84-1405. Record of coal sold for retail.** Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license *tax* to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its *director*, agents, or employees."

Section 4. Section 84-1406, R.C.M. 1947, is amended to read as follows:

"**84-1406. Statement of coal sold — form and filing.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, *prepare a statement*, on forms prescribed by the state department of revenue, showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid, or assumed liability for the payment of, any license *tax* to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license *taxes* from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state *department of revenue*, pay to the state *department of revenue* the amount of the license *taxes* shown by such statement to be due to the state of Montana for the quarter for which said statement is made. *The state department of revenue may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.*"

Section 5. Section 84-1408, R.C.M. 1947, is amended to read as follows:

"**84-1408. Procedure to determine tax on failure to file statement — penalty.** If any person shall fail, neglect, or refuse to make or file the statement required by section 84-1406, or shall fail to make payment of such license tax within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to

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inform itself, as best it may, regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license *taxes* due from such person for such quarter. *The state department of revenue shall add to the amount of all such delinquent license taxes a penalty of ten percent (10%) of the amount of such license taxes plus interest at the rate of one percent (1%) per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The state department of revenue shall mail to the person required to file a quarterly statement and pay any license tax, a letter setting forth the amount of license tax, penalty and interest due and the letter shall further contain a statement that if payment is not made within such time a lien may be filed as set forth in section 84-1408.1. Upon receipt of said letter the person shall remit to the department of revenue the full amount of license tax, penalty and interest due within fifteen (15) days. The ten percent (10%) penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-1406 is provided to the said department.*"

Section 6. There is a new R.C.M. section numbered 84-1408.1 that reads as follows:

84-1408.1. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed and recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 7. Section 84-1417, R.C.M. 1947, is amended to read as follows:

"**84-1417. License taxes supplemental.** The license *tax* herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act."

Section 8. Sections 84-1409, 84-1412 and 84-1414, R.C.M. 1947, are repealed.

Approved March 25, 1975.

CHAPTER NO. 126

AN ACT TO AMEND SECTIONS 84-2002, 84-2004, 84-2005, 84-2006, 84-2007, 84-2008, 84-2009, 84-2010, 84-2011, AND 84-2013, R.C.M. 1947, RELATING TO THE METALLIFEROUS MINES LICENSE TAX; REPEALING SECTION 84-2012, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 84-2002, R.C.M. 1947, is amended to read as follows:

"**84-2002. Persons liable to pay license tax.** Every person who engages in or carries on the business of working or operating any mine or mining property in the state of Montana from which gold, silver, copper, lead or any other metal or metals, or precious or semiprecious gems or stones of any kind shall be mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1925, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state *department of revenue;* for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work or operation in this state, provided, however, that nothing contained in this act shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property, to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims, or any annual assessment work, or work required in the obtaining of title to mining property from the United States, or required by the laws of the United States or of this state in order to hold possessory title to any mining claims, be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property."

Section 2. Section 84-2004, R.C.M. 1947, is amended to read as follows:

"**84-2004. Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, shall be for the production years commencing on or after January 1, 1970 and for each production year thereafter, *be* an amount computed on the gross value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates: The rate of tax shall be fifteen hundredths of one per cent (0.15 of 1%) of the first one hundred thousand dollars ($100,000) of the gross value of the product, five hundred seventy-five thousandths of one per cent (0.575 of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars ($100,000) and does not exceed two hundred and fifty thousand dollars ($250,000); eighty-six hundredths of one per cent (0.86 of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars ($250,000) and does not exceed four hundred thousand dollars ($400,000); one and fifteen hundredths per cent (1.15%) of the amount by which the gross value of product exceeds four hundred thousand dollars ($400,000) and does not exceed five hundred thousand dollars ($500,000) and one and four hundred thirty-eight thousandths per cent (1.438%) of the amount by which the gross value of product exceeds five hundred thousand dollars ($500,000)."

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Section 3. Section 84-2005, R.C.M. 1947, is amended to read as follows:

"**84-2005. Statement of gross value of product.** Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state department of revenue and must be delivered to the state department of revenue not later than the fifteenth day of April. *The state department of revenue may grant a reasonable extension of time for filing statements upon good cause shown therefor.* Such statement shall show the following:

1. The name and address of the owner or lessee of the mine or mining property.

2. The description and location of the mine or mining property.

3. The number of tons of ore or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement.

4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by the statement and such other information as the state department of revenue may require.

5. The gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by the statement.

6. The gross value of product in dollars and cents."

Section 4. Section 84-2006, R.C.M. 1947, is amended to read as follows:

"**84-2006. Computation and notice of tax.** The state department of revenue shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable and that it will become delinquent at five o'clock p.m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten *percent (10%)* will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest

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at the rate of *one percent (1%) per month or fraction thereof* from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state department of revenue shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable."

Section 5. Section 84-2007, R.C.M. 1947, is amended to read as follows:

"**84-2007. Delinquent taxes — penalty.** All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p.m., on the thirtieth day of June following the date when the same are assessed, and as the same become delinquent a penalty of ten *percent (10%)* shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of *one percent (1%) per month or fraction thereof* from the date of becoming delinquent until paid."

Section 6. Section 84-2008, R.C.M. 1947, is amended to read as follows:

"**84-2008. Procedure in case of failure to file statement.** If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state department of revenue, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state, and from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately give notice to such person in the same manner as though such statement had been filed within time, and shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies."

Section 7. Section 84-2009, R.C.M. 1947, is amended to read as follows:

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"**84-2009. False or erroneous statements — investigation concerning.** (1) Should the state director of the department of revenue have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the director of revenue or his agent and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the director or any of his employees, or refusing to permit the director, or his employees to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the director, after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the director shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty *percent (50%),* and shall thereupon immediately mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty *due and payable.*

(2) The state *department of revenue* shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of *one percent (1%) per month or fraction thereof.* Provided further, that in order to verify such statement and return the state department of revenue may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the director of revenue and testify concerning the gross mineral content of any such ore, or at the request of said director to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by

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any mine or mining property in the state of Montana shall be open to inspection and examination by the director of revenue or his employees at any time or place that the director may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state department of revenue or shall refuse to appear before the director of revenue to testify concerning the gross mineral content of any such ore, or shall refuse to allow the director or his employees at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars *($1,000)*, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment."

Section 8. Section 84-2010, R.C.M. 1947, is amended to read as follows:

"**84-2010. Hearing on determination of value of gross product or amount of tax.** Every person whose license tax has been determined and assessed by the state department of revenue under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the department as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days after the date of notice thereof, required to be given to such person, file with the state tax appeal board a petition for a hearing in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department of revenue has erred in any manner in ascertaining and determining the amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a hearing the board shall take no further steps in connection with such petition, other than to *notify* the state *department of revenue of* the *correct* amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the state tax appeal board that the department of revenue has erred in any manner the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. *At the* hearing *of* such person, any taxpayer interested, and the department of revenue may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and reassess the amount

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of the license tax to be paid by such person, and give notice thereof *to such person and the state department of revenue.*"

Section 9. Section 84-2011, R.C.M. 1947, is amended to read as follows:

"**84-2011. Lien of tax.** The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the *notice of* license tax *due or other statement is filed with the proper county clerk* by the state department of revenue and such lien may be enforced in the name of the state of Montana, in the same manner as other *judgment* liens are enforced at law."

Section 10. There is a new R.C.M. section numbered 84-2008.1 that reads as follows:

84-2008.1. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed and recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 11. Section 84-2013, R.C.M. 1947, is amended to read as follows:

"**84-2013. Commencing business.** If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semiprecious gems and stones are extracted and produced, such person, must, within sixty *(60)* days after so engaging in or commencing to carry on such business, notify the state department of revenue of such fact."

Section 12. Section 84-2012, R.C.M. 1947, is repealed.

Approved March 25, 1975.

CHAPTER NO. 127

AN ACT TO AMEND SECTIONS 84-1102, 84-1104, 84-1106, AND 84-1108, R.C.M. 1947, RELATING TO THE CEMENT DEALERS' LICENSE TAX; TO REPEAL SECTIONS 84-1109 AND 84-1111, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 84-1102, R.C.M. 1947, is amended to read as follows:

"**84-1102. License tax on sales of cement, etc.** Every person who engages in, or carries on the occupation or business in this state of retailing or selling at retail cement, cement plaster, gypsum plaster, or other byproducts of cement, must, for the year 1921, and each year thereafter when engaged in such occupation or business, *pay to the state department of revenue a license tax, for engaging in and carrying on such business, in an amount* equal to four cents per barrel of three hundred seventy-six pounds of cement, and five cents per ton of two thousand pounds on cement plaster, gypsum plaster, or other byproducts of cement sold by such person during such year, and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state of Montana, under any law of this state."

Section 2. Section 84-1104, R.C.M. 1947, is amended to read as follows:

"**84-1104. Quarterly payment of license tax.** The said license tax of four cents *($.04)* per barrel and *five* cents *($.05)* per ton shall be paid in quarterly installments for the quarters ending March 31st, June 30th, September 30th, and December 31st, in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license tax becoming due for any quarter shall be paid to the state *department of revenue* within thirty *(30)* days after the end of the quarter for which the same is due."

Section 3. Section 84-1106, R.C.M. 1947, is amended to read as follows:

"**84-1106. Quarterly statement of products sold on which no tax paid — payment of tax.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of *each* following quarter, *prepare a statement*, on forms prescribed by the state department of revenue, showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state *department of revenue*, pay to the state *department of revenue* the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. *The state department of revenue may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.*"

Section 4. Section 84-1108, R.C.M. 1947, is amended to read as follows:

"**84-1108. Procedure to ascertain tax on failure to file statement**

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— **penalty — tax lien.** If any person shall fail, neglect or refuse to make or file the statement required by section 84-1106 within the time required, the state department of revenue shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes due from such person for such quarter. *The state department of revenue shall add to the amount of all such delinquent license taxes a penalty of ten percent (10%) of the amount of such license taxes plus interest at the rate of one percent (1%) per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The state department of revenue shall mail to the person required to file a quarterly statement and pay any license tax, a letter setting forth the amount of license tax, penalty and interest due and the letter shall further contain a statement that if payment is not made within such time a lien may be filed as set forth in section 84-1108.1. Upon receipt of said letter the person shall remit to the department of revenue the full amount of license tax, penalty and interest due within fifteen (15) days. The ten percent (10%) penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-1106 is provided to the said department.*"

Section 5. There is a new R.C.M. section numbered 84-1108.1 that reads as follows:

84-1108.1. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed and recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 6. Sections 84-1109 and 84-1111, R.C.M. 1947, are repealed.

Approved March 25, 1975.

CHAPTER NO. 128

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 68-1602, 68-1605.1, 68-1607, 68-1608, 68-1902, 68-1905, 68-1906, 68-2001, 68-2003, 68-2004, 68-2101, 68-2504, AND 68-2513, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1602, R.C.M. 1947, is amended to read as follows:

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"**68-1602. Exclusions.** The following persons shall not become members of the retirement system:

(1) elective officers who have not filed with the board of administration written requests to become members; provided that any person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office; and provided further that if he shall affirmatively exercise the option, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors unless written contract specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of sixty (60) working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board of administration an election not to become members; provided, any person so excluded from membership by his own election may become a member by meeting the requirements of the balance of this subsection. Such a person must file an election to become a member with the board of administration no later than July 1, 1975; provided, that any such person who is not an employee on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming an employee. In either event, such person must thereupon pay to the retirement system the amount which he and his employer would have contributed had he not been so excluded plus interest which would have accumulated thereon. All benefits payable thereafter to such person shall be the same as if such person had never filed an election not to be a member;

(7) persons directly appointed by the governor, who do not file with the board of administration an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government or political subdivision thereof and who are receiving credit in such other system for service, it being the purpose of this section to prevent a person from receiving credit for the same service in two (2) retirement systems supported wholly or in part by public funds, *except when such service qualifies, is applied for, and purchased pursuant to section 68-1605.1*; any member of the retirement system who, because of his employment by the state, shall be required to become a member of any such other systems, shall be considered solely for the purposes of making normal contributions as permanently separated from service; the accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him

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to receive any death benefit payable under section 68-2301; employer contributions on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the employer; for the purpose of this section, persons receiving pensions, retirement allowances or other payments, from any source, on account of employment other than as an employee as defined in this act, shall not be considered, because of such receipt, members of any other retirement or pension system; provided, however, that where an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the Internal Revenue Service for its employees, such employees shall remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages shall not be deemed a part of the employee's compensation for purposes of computing the employer or employee contributions to the retirement system;

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their sixtieth birthday and have no creditable service in this system, and who do not file with the board of administration an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members."

Section 2. Section 68-1605.1, R.C.M. 1947, is amended to read as follows:

"**68-1605.1. Election to qualify military service for full credit.** *(1)* A member with ten (10) years or more of state service *qualified* under this act may at any time prior to retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits up to a maximum of five (5) years if he is not otherwise eligible to receive credit for this same service pursuant to section 68-1605. To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his eleventh year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he so contributes. He may not qualify more of this service than he has state service in excess of ten (10) years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal service retirement benefit he may not qualify his military service under subsection (1) of this section; provided, however, that a member, who is serving or has served in the military reserves with the expectation of receiving a military service pension, may qualify his active military service under subsection (1) of this section if his active

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duty in the armed forces of the United States is not more than twenty-five percent (25%) of the total sum of all years of military service including reserve and active duty time."

Section 3. Section 68-1607, R.C.M. 1947, is amended to read as follows:

"**68-1607. Qualification of service with employer.** *(1)* Subject to the provisions of this section, any person who has service with *an* employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board of administration no later than July 1, 1975, provided that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member. In either event, *such* person must pay to the retirement system the sum of the amount which he *and his employer* would have contributed during the period of service so converted if the employer had then been *an* employer and the interest which would have accumulated thereon to the time of such payment; provided, that the employer may pay the employer's portion including accrued interest. *The employer must establish a policy as to the retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination will be subject to the determination of the Board of Administration. All successful appeals will obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing such appeal with the Board of Administration. Each appeal will be heard on its individual merits and will not bind the employer to pay all retroactive payments for all former and present employees.*

(2) Payment may be made in one sum at the time of such filing or on an installment basis. Installment payments shall not exceed twenty-four (24) monthly payments. When the monthly payment, exceeds five percent (5%) of compensation in the initial month of payment, the board of administration may allow smaller payments *over* a period to exceed twenty-four (24) months. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter, forfeit such person's right to make any further installment payments, *unless permission is granted to do so by the board of administration.*"

Section 4. Section 68-1608, R.C.M. 1947, is amended to read as follows:

"**68-1608. Qualification of prior service not previously credited.** Credit for any prior service not previously granted shall be granted to a member upon his filing written notice thereof with the board of administration no later than July 1, 1975, provided, that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member and further provided he otherwise has not less than *five (5)* years of creditable service of which not less than three (3) years have been as a contributing member of the retirement system. Proper certification of such service must be furnished."

Section 5. Section 68-1902, R.C.M. 1947, is amended to read as follows:

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"**68-1902. Member's contributions — deduction from pay.** The normal contribution of each member shall be equal to *six percent (6%)* of his compensation. The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this act."

Section 6. Section 68-1905, R.C.M. 1947, is amended to read as follows:

"**68-1905. Refund of contributions on termination of service.** Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid such part of his accumulated contributions, *including regular interest thereon,* as he requests. If he has less than *five (5)* years of service and he does not reenter service for a period of five (5) years after such discontinuance, he shall automatically be paid any portion of his total accumulated contributions not previously withdrawn. Upon qualification for any other benefit under this act, a member having any accumulated normal contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered service, all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-1906."

Section 7. Section 68-1906, R.C.M. 1947, is amended to read as follows:

"**68-1906. Reinstatement after withdrawal of contributions — redeposit of contributions.** Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of his accumulated normal contributions after a termination of previous membership is considered a new member without credit for any previous membership service, and he may reinstate that membership service by redepositing the sum of the accumulated normal contributions which were refunded to him at the last termination of his membership plus the interest which would have been credited to his account had the refund not taken place. If he makes this redeposit, his membership shall be the same as if unbroken by such last termination. Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership shall be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents shall continue unchanged until changed as provided herein."

Section 8. Section 68-2001, R.C.M. 1947, is amended to read as follows:

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"**68-2001. Eligibility for service retirement — early retirement.** (1) A member who has attained the age of sixty (60) and completed *five (5)* years of *qualified* service is eligible for service retirement. A member who has attained age sixty-five (65) is eligible for service retirement regardless of his years of creditable service. A member who has completed thirty (30) years or more of state service is eligible for service retirement regardless of his age.

(2) A member who is not eligible for service retirement but has attained age fifty-five (55) and completed *five (5)* years of *qualified* services is eligible for early retirement."

Section 9. Section 68-2003, R.C.M. 1947, is amended to read as follows:

"**68-2003. Annual amount of retirement allowance payable.** The annual amount of retirement allowance payable to a member following his service retirement is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(2) one *sixtieth (1/60)* of his final compensation multiplied by the number of years of his creditable service;

(3) any retirement allowance payable under section 68-2004."

Section 10. Section 68-2004, R.C.M. 1947, is amended to read as follows:

"**68-2004. Excess allowance to members on July 1, 1973.** The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2) as follows over subsection (2) of section 68-2003:

(1) the sum of a pension for prior service equal to one *sixtieth (1/60)* of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age seventy (70) in service, the lesser of four hundred eighty dollars ($480) or one-half (½) of his final compensation."

Section 11. Section 68-2101, R.C.M. 1947, is amended to read as follows:

"**68-2101. Disability retirement eligibility — definitions — medical examinations — hearings — waiver.** (1) A member who has not reached seventy (70) years of age but has become disabled for duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(2) A member who is not eligible for service or early retirement but has completed *five (5)* years of creditable service and has become disabled

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while in active service for other than duty-related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement.

(3) "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

(4) "Duty-related" means as a result of an injury or disease arising out of or in the course of his employment with an employer.

(5) "Injury" means a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical conditions as result therefrom, and excluding disease not traceable to injury.

(6) The board shall determine whether a member has become disabled and whether a disabled member became disabled for duty-related reasons. In the discharge of its duty regarding such determinations, the board, any member thereof or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and of sections 68-2201 and 68-2202 and shall pay for those medical services and advice compensation the board deems reasonable.

(7) A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement."

Section 12. Section 68-2504, R.C.M. 1947, is amended to read as follows:

"**68-2504. Employer contribution rates — actuarial determination.** (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be four and six-tenths percent (4.6%) from July 1, 1973, to June 30, 1975, and four and nine-tenths percent (4.9%) from July 1, 1975, *to June 30, 1976, and five and one-quarter percent (5.25%) from July 1, 1976, to June 30, 1977 and five and sixty-five hundredths percent (5.65%) from July 1, 1977 to June 30, 1978 and five and ninety hundredths percent (5.90%) from July 1, 1978,* and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the forty (40) year period follow-

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ing the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons."

Section 13. Section 68-2513, R.C.M. 1947, is amended to read as follows:

"**68-2513. Cost-of-living increases.** (1) Effective July 1, *1975*, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by *one dollar ($1) per month for each year of creditable service at the time of retirement and two dollars ($2) per month for each full calendar year he has been retired.*

(2) Effective July 1, *1975* every survivorship annuity then payable to a member's beneficiary shall be increased by *one dollar ($1) per month for each year of creditable service of the deceased member and two dollars ($2) per month for each full calendar year since the deceased member retired.*"

Approved March 25, 1975.

CHAPTER NO. 129

AN ACT TO REVISE THE PROVISIONS OF MONTANA'S SEXUAL CRIMES STATUTES PERTAINING TO SEXUAL INTERCOURSE WITHOUT CONSENT; AMENDING SECTION 94-5-503, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"**94-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with a *person* not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

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(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) Evidence of the victim's past sexual conduct with the offender;

(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

If the defendant proposes, for any purpose, to offer evidence described in (a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this subsection.

(6) If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such fact, standing alone, may not bar conviction."

Approved March 25, 1975.

CHAPTER NO. 130

AN ACT AMENDING SECTION 87A-2-401, R.C.M. 1947, TO ALLOW A SELLER, WHEN A TRANSACTION INVOLVES INTERSTATE SHIPMENT OF CATTLE, TO ISSUE A REGULAR TITLE OR BILL OF SALE, OR A TRANSFER OF TITLE THAT IS CONDITIONAL UNTIL THE SELLER HAS RECEIVED NOTIFICATION FROM THE BUYER'S BANK THAT THE INSTRUMENT OF PAYMENT HAS CLEARED THE BANK, SUCH NOTIFICATION TO BE ATTACHED TO THE BILL OF SALE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87A-2-401, R.C.M. 1947, is amended to read as follows:

"**87A-2-401. Passing of title — reservation for security — limited application of this section.** Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. In so far as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 87A-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter

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9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle the seller may issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn, notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment, and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale.""

Approved March 25, 1975.

CHAPTER NO. 131

AN ACT AUTHORIZING MUNICIPAL CORPORATIONS TO FINANCE REHABILITATION OF UNSAFE OR UNSANITARY PRIVATELY OWNED HOUSING.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1025 that reads as follows:

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11-1025. Purpose and policy. (1) It is hereby declared that unsanitary or unsafe privately owned dwelling accommodations exist in urban areas throughout the state and that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, morals and welfare of the citizens of the state and impair economic values; that in many instances the owners of such accommodations, due to poverty, unavailability of credit and increased costs, are unable to finance the rehabilitation of their dwellings; that the municipal corporations of the state are uniquely able to render financial assistance to these owners of unsafe and unsanitary dwellings and that such assistance is a public use and purpose for which public money may be spent; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest.

(2) When it has determined that unsanitary or unsafe privately owned dwelling accommodations exist within the limits of the city or town and when it has further determined that the owners of such accommodations are unable under the prevailing market conditions to finance rehabilitation of their dwellings without assistance, the governing body of any municipal corporation may finance the rehabilitation of such unsanitary or unsafe privately owned dwelling accommodations through the use of grants of funds or property, direct loans, loan guarantees, and other means; and may apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county or other public body, or from any other source, public or private, for the purpose of this section, and may enter into and carry out contracts in connection therewith.

Approved March 25, 1975.

CHAPTER NO. 132

AN ACT TO AMEND SECTION 75-6902, R.C.M. 1947, TO PROVIDE SECONDARY SCHOOLS A METHOD OF CALCULATING AVERAGE NUMBER BELONGING WHILE OFFERING PART-TIME ATTENDANCE TO ELEVENTH AND TWELFTH GRADE STUDENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6902, R.C.M. 1947, is amended to read as follows:

"75-6902. Definition and calculation of average number belonging (ANB). The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the

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aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half (½) day. In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507 (1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half (½) of a day attended or absent as the case may be. If a variance has been granted as provided in section 75-7403, ANB will be computed in a manner prescribed by the superintendent of public instruction but in no case shall the ANB exceed one-half (½) for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program he shall be considered regularly enrolled for ANB purposes.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) more than one school of a district, other than a junior high school in an elementary district which has been approved and accredited as a junior high school, is located within the incorporated limits of a city or town, the average number belonging of such schools shall be based on the aggregate of all the regularly enrolled, full-time pupils attending such schools located within the incorporated limits of a city or town;

(2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town;

(3) a middle school has been approved and accredited, in which case pupils below the seventh grade shall be considered elementary school pupils for ANB purposes, and the seventh and eighth grade pupils shall be considered high school pupils for ANB purposes; or

(4) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes,

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nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.

When eleventh or twelfth grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB shall be determined in a manner prescribed by the superintendent of public instruction."

Approved March 25, 1975.

CHAPTER NO. 133

AN ACT TO CLARIFY THE LICENSING AND REGULATION OF RENTAL LOCATION AGENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1925, R.C.M. 1947, is amended to read as follows:

"66-1925. Definitions. Unless the context requires otherwise, in this act:

(1) "Real estate" includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(2) "Broker" includes an individual who for another, or for a fee, commission, or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate, to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration; it also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose, or for referral of information concerning real estate to brokers, or both*; and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining for purchase or lease any real estate.*

(3) "Salesman" includes an individual who, for a salary, commission, or compensation of any kind, is employed, either directly, indirectly, regularly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(4) "Person" includes individuals, partnerships, associations, and cor-

porations, foreign and domestic, except that when referring to a person licensed under this act it means an individual.

(5) "Board" means the board of real estate, provided for in section 82A-1602.23.

(6) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16."

Approved March 25, 1975.

CHAPTER NO. 134

AN ACT TO AMEND SECTION 84-708.1, R.C.M. 1947, TO ALLOW THE DEPARTMENT OF REVENUE THE DISCRETION TO WAIVE THE ASSESSMENT OF PENALTIES FOR LATE FILING OF TAX STATEMENTS AND RETURNS AND THE LATE PAYMENT OF TAXES WHEN THE FILING AND PAYMENT ARE MADE WITHIN FIVE (5) DAYS OF THE TIME SPECIFIED FOR FILING AND PAYMENT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-708.1, R.C.M. 1947, is amended to read as follows:

"**84-708.1. Powers and duties of the state department of revenue.** (1) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals, and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis, or in the case of telegraph or telephone microwave electronic equipment, which has no physical connection with the total system, but is an integral part of such system, apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as shall be just and equitable, provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the agent of the department of revenue in the county wherein they are situate.

(2) To transmit to the county clerk of each county its apportionment of all assessments made by the department.

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(3) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over its agents and any officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement. Further, the state department of revenue is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the department and the costs of such appraisers and assessors attending shall be borne by the state. Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary. The department shall notify all assessors and appraisers at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the state.

(5) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the department.

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(9) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the department. Upon completion of such inspection and examination the department shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the department to secure the necessary information. Within sixty (60) days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(10) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the department shall have authority to investigate and determine.

(12) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department shall have authority to investigate and determine.

(13) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(14) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the department, and to furnish the governor such assistance as he may require.

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(16) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the department, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(17) In its discretion, to waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within five (5) days of the date specified for filing the return or statement, and for the late payment of any tax collected by the department when the payment is made within five (5) days of the date specified for payment of the tax."

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved March 25, 1975.

CHAPTER NO. 135

AN ACT TO AUTHORIZE THE PRACTICE OF VETERINARY TECHNOLOGY; TO INCREASE THE NUMBER OF MEMBERS ON THE BOARD OF VETERINARIANS FROM FIVE (5) TO SIX (6) BY AMENDING SECTIONS 82A-1602.24 AND 66-2202, R.C.M. 1947; TO PROVIDE FOR CONTINUING EDUCATION AND INCREASE THE LICENSE FEE BY AMENDING SECTION 66-2207, R.C.M. 1947; AND TO CHANGE THE DEFINITION OF VETERINARY MEDICINE BY AMENDING SECTIONS 66-2209 AND 66-2211, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-2213 that reads as follows:

66-2213. Veterinary technicians — definitions — examinations. (1) The board of veterinarians may also issue to qualified applicants licenses for the practice of veterinary technology, to be known as veterinary technicians.

(2) As used in this act:

(a) "Veterinary technician" means a person determined by the board to be qualified by education and training to provide limited veterinary services under the direct supervision of a licensed veterinarian who shall be responsible for the performance of that technician; provided, however, that nothing in this act permits the board or any licensed veterinarian to delegate any of the following duties or functions:

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(i) diagnosis;

(ii) prognosis;

(iii) prescription; or

(iv) surgery.

(b) "Direct supervision" means an order by the supervising licensed veterinarian to the veterinary technician, with notice to the client, to perform a specific function for that client within the veterinarian's routine practice, with a follow-up by the veterinarian to evaluate and determine the quality and effectiveness of the function performed and with all billing for such services to be made by the veterinarian.

(3) Each candidate for examination as a veterinary technician shall file in his full name an application for examination with the board at least thirty (30) days before the date set by the board for the commencement of the examination and at the time of making the application shall pay the board a fee of twenty-five dollars ($25). The applicant shall furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of veterinary technology offering a course of study recognized and approved by the board of veterinarians, as well as such other information as may be required by the board.

(4) The board shall adopt uniform rules within the limitations of this act, governing the matter of examinations for license to practice veterinary technology in the state of Montana, which examinations shall be open to any applicant meeting the requirements of this act, and shall also provide in such rules for giving reasonable notice of the time and place where examinations shall be held.

(5) A person who can produce satisfactory evidence that he has been employed as a veterinary technician in the office of a regularly licensed veterinarian in the state of Montana for two (2) or more years prior to the passage of this act, may, upon payment of a fee of twenty-five dollars ($25), be granted a certificate to practice by the board of veterinarians; provided that if the board in its discretion finds that animal health and the public interest so require, the board may require the applicant to pass a practical examination in veterinary technology. A certificate must be secured before such person may continue practice as a veterinary technician.

(6) Each applicant who passes the examination prescribed by the board shall be granted a license as a veterinary technician and shall be registered as such in a record kept by the board, and shall receive a certificate in a form to be prescribed by the board.

(7) A licensed veterinary technician may practice in the office of and under the direct supervision of a legally licensed and actively practicing veterinarian or in a department of state government in which a legally licensed veterinarian is present to exercise direct supervision.

(8) Each licensed veterinary technician shall annually, on or before July 1, procure from the board a certificate of annual registration. The

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fee for annual registration shall be fixed by the board, not exceeding the sum of ten dollars ($10). Failure of a licensee to procure a certificate of registration on or before July 1 shall constitute a forfeiture of the license.

(9) Each licensed veterinary technician shall keep the board informed of his address, the name and address of the licensed veterinarian or of the state department which is his employer, and such other information as the board may by rule require.

Section 2. There is a new R.C.M. section numbered 66-2214 that reads as follows:

66-2214. Denial, suspension and revocation of licenses or certificates. The board may deny or suspend or revoke any license or certificate of registration upon the grounds that the applicant or veterinary technician is guilty of:

(1) soliciting patients for any practitioner of the healing arts;

(2) soliciting or receiving any form of compensation from any person other than his registered employer for performing as a veterinary technician;

(3) willfully or negligently divulging a professional confidence or discussing a veterinarian's diagnosis, or treatment, without the express permission of the veterinarian;

(4) any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence, provided that at the conclusion of state supervision imposed as a consequence of such conviction the board shall not consider the conviction upon reapplication for a license or certificate;

(5) the habitual or excessive use of intoxicants or drugs;

(6) fraud or misrepresentation in applying for or procuring a certificate of qualification to perform as a veterinary technician, or in applying for or procuring an annual registration;

(7) impersonating another person registered as a veterinary technician or allowing any person to use his certificate of qualification or registration;

(8) aiding or abetting the practice of veterinary medicine by a person not licensed by the board;

(9) gross negligence in the performance of duties, tasks or functions assigned to him by a licensed veterinarian;

(10) manifest incapacity or incompetence to perform as a veterinary technician.

Section 3. There is a new R.C.M. section numbered 66-2215 that reads as follows:

66-2215. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engag-

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ing in the practice of veterinary medicine or veterinary technology, unless otherwise exempted under section 66-2211, subsection (7). If the court finds that the defendant is violating, or threatening to violate, any provision of Title 66, chapter 22, R.C.M. 1947, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 66, chapter 22, R.C.M. 1947.

Section 4. Section 82A-1602.24, R.C.M. 1947, is amended to read as follows:

"**82A-1602.24. Board of veterinarians — appointment — qualifications — term — removal.** (1) There is a board of veterinarians.

(2) The board consists of *six (6)* members appointed by the governor, *five (5) of whom shall be licensed veterinarians and one (1) of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of professional and occupational licensing.*

(3) The Montana state veterinary medical association shall, at each annual meeting, nominate twice the number of *veterinarian* board members to be appointed that year. The names of these nominees shall be annually transmitted, under seal, to the governor before July 1. The governor shall, before August 1, appoint from this list the board members to fill the vacancies that will occur July 31. If no nominee has the required qualifications to be on the board, the governor may appoint any licensed and registered veterinarian.

(4) Each *veterinarian* member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees, and have educational standards equal to those approved by the American veterinary medical association. Each *veterinarian* member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least five (5) years immediately before his appointment.

(5) Each member shall serve for a term of five (5) years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty."

Section 5. Section 66-2202, R.C.M. 1947, is amended to read as follows:

"**66-2202. Organization of board — quorum — powers.** (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold at least two (2) regular meetings each year. At a meeting *four (4)* members of the board constitute a quorum. If a member of the board, without cause, absents himself from two (2) of its regular meetings consecutively, his office is vacant.

(3) The board may adopt rules and orders necessary for the performance of its duties; prescribe forms for application for examination and license; prepare examinations and the department shall, subject to section 82A-1603, supervise the examination of applicants for license to practice

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veterinary medicine; obtain the services of professional examination agencies instead of its own preparation of examinations; and grant and revoke licenses.

(4) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court."

Section 6. Section 66-2207, R.C.M. 1947, is amended to read as follows:

"**66-2207. Issuance, registration and reinstatement of licenses.** (1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of section 66-2208, if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal, and shall be signed by the president and secretary-treasurer of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law, and that after full examination or investigation under reciprocity arrangements he has been found qualified to practice.

(3) A person licensed to practice veterinary medicine in this state shall procure from the department before July 1, annually, his certificate of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board, not exceeding the sum of *twenty-five* dollars *($25) and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination during the six (6) months preceding July 1 shall be granted renewals without attending the educational programs.* The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued. Failure of a person licensed to procure a certificate of registration before July 1 annually constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within one (1) year of the forfeiture setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee not in excess of *twenty-five* dollars *($25)* as the board requires *and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements required of all licensees recited above.* The person making application for restoration of license within one (1) year of its forfeiture is not required to submit to examination.

(4) Notwithstanding any other provisions in this chapter, a person

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licensed who enters, or is called to active duty by, a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within one (1) year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within one (1) year after release or discharge is the equivalent of a failure to procure a certificate of registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(5) A person licensed shall at all times have his residence and office address on file with the department."

Section 7. Section 66-2209, R.C.M. 1947, is amended to read as follows:

"**66-2209. Veterinary medicine defined.** (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) Represents himself as or is engaged in the practice of veterinary medicine in any of its branches either directly or indirectly.

(b) Uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) Diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature, or performs a surgical operation or manipulation, for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals.

(d) Instructs, demonstrates, or solicits, by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals.

(e) Performs a manual or laboratory procedure for the diagnosis of pregnancy, sterility, or infertility on livestock for remuneration or hire.

(f) Performs acupuncture or ova or embryo transfer on animals.

(g) Instructs others except those covered under the provisions of section 66-2211, subsection (7) for compensation in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) A person may not practice veterinary medicine or veterinary surgery in this state unless licensed, and registered as required by this chapter; nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board."

Section 8. Section 66-2211, R.C.M. 1947, is amended to read as follows:

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"66-2211. Interpretation of statute — persons not embraced within provisions. This chapter does not apply to:

(1) Veterinarians in the performance of their official duties, either civil or military, in the service of the United States, unless they engage in the practice of veterinary medicine in a private capacity.

(2) Laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state, or the United States, and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university or the United States.

(3) Lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation.

(4) A veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state, but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state.

(5) The employment of veterinary medical students who have successfully completed three (3) years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees as assistants to veterinarians licensed and registered under this chapter. However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of six (6) months from the date of completion of the third year of study.

(6) The operations known and designated as castrating or dehorning of cattle, sheep, horses, *and* swine are not the practice of veterinary medicine within the meaning of this chapter.

(7) This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees employed in the conduct of his business, or by other persons whose services are rendered gratuitously in case of emergency.

(8) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business."

Approved March 25, 1975.

CHAPTER NO. 136

AN ACT AMENDING SECTION 59-1606, R.C.M. 1947, TO PROVIDE

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THAT THE BOARD OF PERSONNEL APPEALS IS NOT BOUND BY COMMON LAW AND STATUTORY RULES OF EVIDENCE IN REPRESENTATION HEARINGS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1606, R.C.M. 1947, is amended to read as follows:

"**59-1606. Petition on representation matters — hearing — notice — election.** (1) Whenever in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that thirty percent (30%) of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative, or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit, the board or an agent of the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. *In this hearing the board is not bound by common law and statutory rules of evidence.* If the board or an agent of the board finds that there is a question of representation, it shall direct an election by secret ballot to determine whether, and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof. Only those labor organizations which have been designated by more than ten percent (10%) of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

(2) In order to assure employees the fullest freedom in exercising the rights guaranteed by this act, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding twelve (12) month period, a valid election has been held. The board or an agent of the board

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shall determine who is eligible to vote in the election and shall establish rules governing the election. Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted; the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative."

Section 2. This act is effective on its passage and approval.

Approved March 25, 1975.

CHAPTER NO. 137

AN ACT TO AUTHORIZE THE BOARD OF PUBLIC EDUCATION TO SPECIFY AND DEFINE THE BASIC INSTRUCTIONAL PROGRAM IN PUBLIC SCHOOLS; CREATING A NEW SECTION 75-7503.1, R.C.M. 1947; AMENDING SECTIONS 75-6303, R.C.M. 1947, RELATING TO COMPULSORY ENROLLMENT, AND 75-8901, R.C.M. 1947, RELATING TO INSTRUCTION IN DRUG EDUCATION, AND REPEALING SECTIONS 75-7503, 75-7504, 75-7509, AND 75-8904, R.C.M. 1947, PRESCRIBING SUBJECTS OF INSTRUCTION IN PUBLIC SCHOOLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-7503.1 that reads as follows:

75-7503.1. Instruction in public schools. The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

Section 2. Section 75-6303, R.C.M. 1947, is amended to read as follows:

"**75-6303. Compulsory enrollment and excuses.** Any parent, guardian or other person who is responsible for the care of any child who is seven (7) years of age or older prior to the first day of school in any school fiscal year and has not yet reached his sixteenth birthday and who has not completed the work of the eighth (8th) grade, shall cause the child to be instructed in the *program* prescribed by *the board of public education pursuant to* section *75-7503.1.* Such parent, guardian or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless:

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(1) the child is enrolled in a private institution which provides instruction in the *program* prescribed by *the board of public education pursuant to* section *75-7503.1*;

(2) the child is enrolled in a school of another district or state under any of the tuition provisions of this Title;

(3) the child is provided with supervised correspondence study or supervised home study under the transportation provisions of this Title; or

(4) the child is excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this Title.

The excuse provided for in subsection (4), above, shall be issued by the district superintendent, or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within ten (10) days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final.

(5) the child is excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child."

Section 3. Section 75-8901, R.C.M. 1947, is amended to read as follows:

"**75-8901. Purpose of act — legislative intent.** It is the purpose of this act to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislative assembly intends to require education graduates of any unit of the Montana university system or any private college, or private university in Montana, to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students."

Section 4. Sections 75-7503, 75-7504, 75-7509, and 75-8904, R.C.M. 1947, are repealed.

Approved March 1975.

CHAPTER NO. 138

AN ACT TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO ORDER UTILITY SERVICE TO A RESIDENTIAL CONSUMER PENDING HEARING ON A COMPLAINT; AMENDING SECTION 70-119, R.C.M. 1947; AMENDING SECTIONS 70-707 AND 93-4215, R.C.M. 1947, TO AUTHORIZE THE CONSUMER COUNSEL TO APPLY FOR, AND THE COURTS TO GRANT, RESTRAINING ORDERS.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-119, R.C.M. 1947, is amended to read as follows:

"70-119. Complaints against public utility — hearing. Upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club, or by any body politic or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms, or corporations are directly affected thereby that any of the rates, tolls, charges, or schedule, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission, or delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act complained of, shall be entered without a formal hearing, *except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within twenty (20) days unless further delayed by consent of all parties.*

The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim."

Section 2. Section 70-707, R.C.M. 1947, is amended to read as follows:

"70-707. Powers and duties of consumer counsel — annual report. The consumer counsel:

(1) may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

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(2) may institute proceedings before the commission against regulated companies;

(3) has all the investigatory powers necessary to perform his duties as provided herein and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act;

(4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

(5) may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof including review of decisions rendered by, or failure to act by the commission *and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to section 93-4215.*

(6) shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;

(7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee;

(8) has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act."

Section 3. Section 93-4215, R.C.M. 1947, is amended to read as follows:

"**93-4215. Injunction against price fixing or consumer abuses.** *(1)* Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people, the court in which such action is pending is authorized to issue an injunction to restrain any such person from doing business in this state pending the final determination of said action so instituted.

(2) When the public service commission is conducting an adjudicatory proceeding or formal investigation relating to continuation or interruption of service upon the motion of the consumer counsel, or the interested person or his legal representative, a district court may, upon the application of the consumer counsel, or the interested person or his legal representative, enter a restraining order against any person respondent in the adjudicatory proceeding or investigation. Such a restraining order may prohibit the respondent, his agents, employees, licensees, and assignees, from acting in the manner complained of in the proceeding before the commission until the commission has rendered its decision in the matter. The restraining order may include an order to show cause why the order

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should not become an injunction for the duration of the proceeding before the commission."

Approved March 25, 1975.

CHAPTER NO. 139

AN ACT AMENDING SECTION 46-208, R.C.M. 1947, TO PERMIT THE DEPARTMENT OF LIVESTOCK TO CHARGE FOR LABORATORY TESTS AND OTHER MATERIALS RELATED TO DISEASE CONTROL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-208, R.C.M. 1947, is amended to read as follows:

"**46-208. Powers of department.** The department may:

(1) Supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, inclosure, or other place or section in this state, which is or may be used or occupied by livestock, and which, in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease, or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state, when the livestock is affected with, or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the diseases.

(2) Foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases, or to the care of livestock and its products; and to this end to establish and maintain a laboratory, and to make, or cause to be made, biologic products, curatives, and preventative agents; and to do or perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state.

(3) Impose and collect such fees as the department considers appropriate for the tests and services performed by the laboratory and for such biologic products, curatives and preventative agents made or caused to be made by the department. In fixing such fees the department shall take into consideration the costs, both direct and indirect, of such tests, services, products, curatives and agents. All fees shall be deposited in the earmarked revenue fund for the use of the animal health functions of the department.

(4) Adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communi-

cable, or dangerous diseases affecting livestock in this state, and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state, before it may be imported into this state.

(5) Adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state.

(6) Adopt rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its by-products, barns, dairy cows, factories, and other places and premises where meat, or meat foods, milk or its products, or any thereof intended for sale or consumption as food are produced, kept, handled, or stored. For the purposes of this act an authorized representative of the department, may take samples of a product so produced, kept, handled, or stored, for analysis or testing by the department's chemist, bacteriologist, or the state chemist, and the records of the samples and their analysis and test, when identified, as to the sample by the oath of the officer taking it, and verified, as to the analysis or test, by the oath of the chemist or bacteriologist making it, is prima facie evidence of the facts set forth in it, when offered in evidence in a prosecution or action at law or in equity for violation of this act, or a rule or order of the board adopted under this act. These standards, in so far as they relate to dairies or milk and its by-products, may not include standards of weight or measurement.

(7) Adopt rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock, and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(8) Install an adequate system of meat inspection at any time and in such places as public welfare may demand under the rules which may provide fees for the maintenance of such inspection, and which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States *department of agriculture.*

(9) Slaughter or cause to be slaughtered, any livestock in this state known to be affected with, or which has been exposed to, an infectious, contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock; and destroy, or cause to be destroyed, all barns, stables, sheds, out-buildings, fixtures, furniture, and personal property infected with any such infectious, contagious, communicable, or dangerous disease, when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease.

(10) Indemnify the owner of any property destroyed by order of the

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department under this act, or any rules or orders adopted by the department under this act.

(11) Require persons, firms, and corporations engaged in the production or handling of meat or meat food products, or dairy products or any thereof, to furnish statistics of the quantity and cost of the food and food products produced or handled, and the name and address of persons supplying them any of the products."

Section 2. This act is effective on its passage and approval.

Approved March 25, 1975.

CHAPTER NO. 140

AN ACT RELATING TO EDUCATION OF CHILDREN IN NEED OF SPECIAL EDUCATION OUTSIDE OF THE DISTRICT OF RESIDENCE, ALLOWING THE BOARD OF TRUSTEES OF THE DISTRICT OF RESIDENCE TO ARRANGE THE ATTENDANCE OF A CHILD IN NEED OF SPECIAL EDUCATION IN ANOTHER DISTRICT WITHOUT THE PAYMENT OF TUITION, PROVIDING THAT THE TUITION FOR EDUCATION OUT OF THE STATE OF MONTANA SHALL BE INCLUDED IN THE MAXIMUM-BUDGET-WITHOUT-A-VOTE FOR SPECIAL EDUCATION; AMENDING SECTIONS 75-7808 AND 75-7809, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7808, R.C.M. 1947, is amended to read as follows:

"**75-7808. Arranging attendance in another district in lieu of a special education program.** In lieu of providing special education in the district, the trustees may arrange for the attendance of a child in need of special education in a special education program approved by the superintendent of public instruction and offered in another district within the state of Montana. *Arrangements for the attendance of a child in need of special education are not subject to the laws governing the attendance of pupils in schools outside the district and no tuition shall be charged the district of residence.*"

Section 2. Section 75-7809, R.C.M. 1947, is amended to read as follows:

"**75-7809. Out-of-state tuition for special education children.** The trustees of any district may arrange for the attendance of a child in need of special education in a special education program offered outside of the state of Montana. Such *arrangements* shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

Whenever the attendance of a child at an out-of-state special education

program is *arranged,* the *board of trustees* may negotiate the amount and manner of payment of tuition. *The amount of tuition shall be included as a contracted service in section 75-7813.1 (b) (iv) (A) in the maximum-budget-without-a-vote for special education."*

Approved March 25, 1975.

CHAPTER NO. 141

AN ACT RELATING TO THE CIRCUMSTANCES UNDER WHICH THE REGULAR AVERAGE NUMBER BELONGING MAY BE INCREASED WHENEVER A HIGH SCHOOL DISTRICT PROVIDES FOR EARLY GRADUATION FOR ANY STUDENT; AMENDING SECTION 75-6903, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6903, R.C.M. 1947, is amended to read as follows:

"75-6903. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in section 75-6902, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with section 75-6602. The average number belonging for such school shall be established by the county superintendent and approved, disapproved or adjusted by the superintendent of public instruction;

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with sections 75-6603, 75-6604 or 75-6605. The average number belonging for such high school shall be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend such high school;

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging shall be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June;

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by section 75-6904;

(5) for the initial year of operation of a program established under

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section 75-7507 (1), the ANB to be used for budget purposes is the same as one-half (½) the number of five (5) year old children residing in the district as of October 1 of the preceding school year, either as shown on the official school census, or as determined by some other procedure approved by the superintendent of public instruction;

(6) a special full-time pupil, as defined in section 75-6902, in a given school year will no longer be considered a special full-time pupil in the ensuing school year. The superintendent of public instruction may grant one ANB for such pupil for the ensuing school year; *or*

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight (8) semesters or the equivalent amount of secondary school enrollment. The increase shall be established by the trustees as though the student had attended to the end of the school year and shall be approved, disapproved, or adjusted by the superintendent of public instruction."

Approved March 25, 1975.

CHAPTER NO. 142

AN ACT AMENDING SECTION 75-6105.1, R.C.M. 1947, TO PROVIDE UPON REQUEST A STATEMENT OF REASONS ON TERMINATION OF EMPLOYMENT OF A PUBLIC SCHOOL TEACHER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6105.1, R.C.M. 1947, is amended to read as follows:

"**75-6105.1. Notification of nontenure teacher re-election.** *(1)* The trustees shall provide written notice to all nontenure teachers who have been re-elected by the first day of April. Any nontenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

(2) When the trustees notify a nontenure teacher of termination, the teacher may within ten (10) days after receipt of such notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within ten (10) days after receipt of the request the trustees shall furnish such statement to the teacher."

Approved March 25, 1975.

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CHAPTER NO. 143

AN ACT AUTHORIZING THE BOARD OF COSMETOLOGISTS TO REGULATE AND LICENSE PERSONS ENGAGED IN THE PRACTICE OF ELECTROLOGY AND PREMISES WHERE ELECTROLOGY IS PRACTICED.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-3601 that reads as follows:

66-3601. Legislative finding and purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

Section 2. There is a new R.C.M. section numbered 66-3602 that reads as follows:

66-3602. Definitions. As used in this act:

(1) "Electrology" means the study and professional practice of removing superfluous hair by destroying the hair roots with an electrified needle. Electrology as defined in this act shall include electrolysis and or thermolysis.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of professional and occupational licensing.

(4) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

Section 3. There is a new R.C.M. section numbered 66-3603 that reads as follows:

66-3603. License required to practice electrology — exceptions. (1) After January 1, 1976, no person may represent himself to be an electrologist or engage in the practice of electrology unless he is licensed under this act.

(2) Nothing in this act prevents:

(a) a licensed medical doctor from performing the work of an electrologist;

(b) a person employed by a federal, state, county, city, or other political subdivision, or by an educational or charitable institution from performing the work of an electrologist.

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Section 4. There is a new R.C.M. section numbered 66-3604 that reads as follows:

66-3604. License — criteria. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least eighteen (18) years of age;

(b) furnish satisfactory evidence of education, instruction, training and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology, if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this act have been met.

Section 5. There is a new R.C.M. section numbered 66-3605 that reads as follows:

66-3605. Electrology salon license required. The premises in which an electrologist or electrologists may practice shall be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

Section 6. There is a new R.C.M. section numbered 66-3606 that reads as follows:

66-3606. Reciprocity. Reciprocal electrology licenses may be granted by the board where the individual has a valid license from another state and has fulfilled requirements of this profession similar to those provided in this act.

Section 7. There is a new R.C.M. section numbered 66-3607 that reads as follows:

66-3607. Authority to create rules — penalties. (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this act and to properly regulate this profession.

(2) Penalties for violations of this act and the rules adopted under it are provided in section 66-811, R.C.M. 1947.

Section 8. There is a new R.C.M. section numbered 66-3608 that reads as follows:

66-3608. Fees — earmarked revenue fund. (1) The fee for an original electrologist license shall not exceed fifty dollars ($50) as set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this act expire on December 31 and shall be renewed annually.

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(4) All fees or moneys collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board in administration of the act.

Approved March 25, 1975.

CHAPTER NO. 144

AN ACT TO REQUIRE INSURANCE CONSULTANTS TO ACQUIRE A LICENSE FROM THE COMMISSIONER OF INSURANCE; TO PROVIDE FOR THEIR LICENSURE; AND PENALTIES FOR VIOLATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 40-3339 that reads as follows:

40-3339. Short title. This act may be cited as "The Montana Insurance Consultant Licensure Act".

Section 2. There is a new R.C.M. section numbered 40-3340 that reads as follows:

40-3340. Prohibition. (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this act; or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified, is guilty of a misdemeanor and upon conviction shall be fined one thousand five hundred dollars ($1,500).

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined one thousand five hundred dollars ($1,500).

Section 3. There is a new R.C.M. section numbered 40-3341 that reads as follows:

40-3341. Application — fee — expiration. Before an insurance consultant's license is issued or renewed the prospective licensee shall: (1) properly file in the office of the commissioner a written application on forms the commissioner prescribes, and

(2) pay a fee of fifty dollars ($50). Every consultant's license shall expire on the thirty-first day of May next following the date of issue.

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Section 4. There is a new R.C.M. section numbered 40-3342 that reads as follows:

40-3342. Commissioner may issue license — limitations. The commissioner may issue an insurance consultant's license to any natural person who has complied with the requirements of this chapter with respect to either (1) life insurance, meaning all of those kinds of insurance authorized in sections 40-2902, 40-2903, 40-3901, 40-4101, 40-4104, 40-4204 or (2) general insurance, meaning all of those kinds of insurance authorized in sections 40-2903 through 40-2908 inclusive, as specified in such license.

Section 5. There is a new R.C.M. section numbered 40-3343 that reads as follows:

40-3343. Qualification. In order to determine the competency of every applicant for license as an insurance consultant, the commissioner shall require membership in one or more of the following: the American college of life underwriters, the American college of property and liability underwriters, the society of actuaries, the casualty actuarial society, or the American academy of actuaries, or require the applicant to pass an examination.

Section 6. There is a new R.C.M. section numbered 40-3344 that reads as follows:

40-3344. Commissioner may refuse to issue license. The commissioner may refuse to issue an insurance consultant's license if, in his judgment, the applicant is not trustworthy and competent to act as a consultant, or has given cause for revocation or suspension of a license, or has failed to comply with any prerequisite for the issuance of a license. The commissioner may revoke or suspend any insurance consultant's license for a period he determines, if, after notice and hearing as specified in this chapter, he determines that the licensee:

(a) has violated any provision of, or any obligation imposed by, the insurance law, or has violated any law in the course of his dealings as a consultant; or

(b) has made a material misstatement in application for a consultant's license; or

(c) has been guilty of fraudulent or dishonest practices; or

(d) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant.

Section 7. There is a new R.C.M. section numbered 40-3345 that reads as follows:

40-3345. Consideration for services only on written memorandum. No person licensed as an insurance consultant under this act may receive any fee for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendations or giving advice with regard to any of the above, unless the compensation is based upon a writ-

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ten memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. A copy of every memorandum or contract shall be retained by the licensee for not less than three years after those services have been fully performed.

Section 8. There is a new R.C.M. section numbered 40-3346 that reads as follows:

40-3346. Limitation on type of consideration. No person licensed as an insurance consultant may receive any compensation, direct or indirect, as a result: (a) of the sale of insurance or annuities to, or (b) the use of securities or trusts in connection with pensions for, any person to whom any licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve (12) months.

Section 9. There is a new R.C.M. section numbered 40-3347 that reads as follows:

40-3347. Licensee may not recommend. No person licensed as an insurance consultant under this section may recommend or encourage the purchase of insurance, annuities or securities from any authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest.

Section 10. There is a new R.C.M. section numbered 40-3348 that reads as follows:

40-3348. Nonapplicability. Nothing in this act applies to: (1) licensed attorneys at law in this state acting in their professional capacity; or

(2) an actuary or a certified public accountant who provides information, recommendations, advice or services in his professional capacity, if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice or services.

Approved March 25, 1975.

CHAPTER NO. 145

AN ACT TO AMEND SECTION 23-3703, R.C.M. 1947, BY EXTENDING FROM FORTY-FIVE (45) DAYS TO SEVENTY-FIVE (75) DAYS THE ALLOWABLE PERIOD FOR APPLYING FOR AN ABSENTEE BALLOT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3703, R.C.M. 1947, is amended to read as follows:

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"**23-3703. Application of absentee or physically incapacitated person for ballot.** During a period beginning *seventy-five (75)* days before the day of election and ending at 12 noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the registrar or city clerk for an absentee ballot."

Approved March 25, 1975.

CHAPTER NO. 146

AN ACT TO REVISE THE POWERS OF THE COMMISSION SUPERVISING A DEPARTMENT OF PUBLIC SAFETY; TO ESTABLISH APPEAL PROCEDURES FOR EMPLOYEES DISCHARGED OR TERMINATED BY THE DIRECTOR OF A DEPARTMENT OF PUBLIC SAFETY; AMENDING SECTIONS 16-2726, 16-2727, 16-2728 AND 16-2729, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2726, R.C.M. 1947, is amended to read as follows:

"**16-2726. Department of public safety — supervision by commission.** On agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established, in counties other than first and second class counties, in lieu of a police department and a sheriffs' office, a department of public safety. The department shall be under the supervision of a *public safety* commission. *The commission shall consist of three (3), five (5), or seven (7) members. Each member of the commission shall serve a four (4) year term and shall be appointed as provided in this act.*"

Section 2. There is a new R.C.M. section numbered 69-2726.1 that reads as follows:

69-2726.1. Appointment of public safety commission members. (1) Upon the creation of a three (3) member commission, one (1) member shall be appointed by the legislative body of the city or town, one (1) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment. Initially, one (1) commission member shall serve a four (4) year term and two (2) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

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(2) Upon the creation of a five (5) member commission, two (2) members shall be appointed by the legislative body of the city or town, two (2) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a five (5) member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of his appointment. Initially, two (2) commission members shall each serve a four (4) year term and three (3) commission members shall each serve a two (2) year term. Each commission member must draw a lot to determine the length of his term.

(3) Upon the creation of a seven (7) member commission, three (3) members shall be appointed by the legislative body of the city or town, three (3) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a seven (7) member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment. Initially, three (3) commission members shall each serve a four (4) year term and four (4) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

(4) Each commission member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(5) No commission member may be an official of any unit of local government.

Section 3. There is a new R.C.M. section numbered 69-2726.2 that reads as follows:

69-2726.2. Vacancies, succession — compensation. (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the person he replaces. A person so appointed shall serve out the unexpired portion of the term of the person he replaces.

(2) The successor for a commission member whose term has expired shall be appointed in the same manner used to appoint the commission member he succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of his term.

(4) Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of official duties. Such costs shall be borne by the county if the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

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Section 4. There is a new R.C.M. section numbered 69-2726.3 that reads as follows:

69-2726.3. Organization — selection and duties of chairman — meetings. (1) Not later than sixty (60) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town shall be designated by the commission to serve as temporary chairman. As its first official act, the commission members shall select a chairman and vice-chairman from their own number.

(3) The chairman of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the chairman, the vice-chairman shall preside over all meetings and hearings of the commission.

(4) Meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the commission members. Hearings in all cases involving employee discharge or termination shall be held upon request of any employee so discharged or terminated.

Section 5. There is a new R.C.M. section numbered 69-2726.4 that reads as follows:

69-2726.4. Application to existing commissions. Upon its passage and approval, this act shall apply to all commissions that supervise a department of public safety. The members of all such commissions shall draw lots to determine the length of their respective terms.

Section 6. Section 16-2727, R.C.M. 1947, is amended to read as follows:

"16-2727. Sheriff as director — appointed or elected. The director of the department *of public safety* shall be the sheriff who may be elected, or may be appointed by the *public safety* commission *if the form of county government provides for an appointed sheriff. A director so appointed shall receive a majority of the votes of the public safety commission members voting on the question of his appointment.*"

Section 7. Section 16-2728, R.C.M. 1947, is amended to read as follows:

"16-2728. Powers and duties of officers, patrolmen and director. Officers and patrolmen of the city or town police department and deputies of the county sheriffs' office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriffs' deputies in counties, as required by state law and municipal ordinance. The director shall have the powers and perform the duties conferred on and required of sheriffs, police officers, *and chiefs of police except in cases involving the discharge or termination of employment of subordinate employees.*

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(1) "Employee" or "subordinate employee" means, but is not limited to, any officer or patrolman of the city or town police department, deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.

(2) In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this act, except that those employees covered under collective bargaining agreements as provided for in chapter 16 of Title 59, R.C.M. 1947, shall be entitled to use any grievance procedure provided for within the collective bargaining agreement."

Section 8. There is a new R.C.M. section numbered 16-2728.1 that reads as follows:

16-2728.1. Hearing procedure for an employee discharged by an appointed director. (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide such employee a written statement subscribed and sworn to by the director setting forth the cause or causes for the discharge or termination of employment.

(2) Within thirty (30) days from the date of discharge or termination of his employment such employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. Such employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings in such cases and the records shall be a matter of public record. For the purpose of keeping a record of the proceedings in such a case, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. Such person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission shall have the power in all cases, wherein a majority of the commission members find the charges not proven, to reinstate any employee to the same position he held and at the same salary he received prior to discharge or termination of employment.

(5) In all cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county wherein the employee was employed. Such appeal must be initiated within sixty (60) days of the ruling of the commission.

Section 9. There is a new R.C.M. section numbered 16-2728.2 that reads as follows:

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16-2728.2. Hearing procedure for an employee discharged by an elected director. (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission in the manner provided in section 8 of this act.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement subscribed and sworn to by the director setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven, but the elected director refuses to reinstate the discharged or terminated employee, or cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision in the manner provided in section 8 of this act.

Section 10. There is a new R.C.M. section numbered 16-2728.3 that reads as follows:

16-2728.3. Reinstatement of a discharged employee who prevails in district court. In the event that an employee prevails in an appeal to the district court he shall be entitled to be reinstated to the same position he held and at the same salary he received prior to his discharge or termination by the director.

Section 11. Section 16-2729, R.C.M. 1947, is amended to read as follows:

"**16-2729. Salaries.** The provisions of section 25-605, R.C.M. 1947, notwithstanding, the salaries of the director and employees of the department of public *safety* shall be established by the *public safety* commission and shall be paid by the city or town with the *board of* county commissioners. Said salaries in any event shall not be less than that specified in section 25-605, R.C.M. 1947."

Approved March 25, 1975.

CHAPTER NO. 147

AN ACT AMENDING SECTION 89-325, R.C.M. 1947, TO PROVIDE

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THAT ALL FEES AND FINES PAID UNDER THE WEATHER MODIFICATION LAWS (TITLE 89, CHAPTER 3, R.C.M. 1947) SHALL BE DEPOSITED IN THE EARMARKED REVENUE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-325, R.C.M. 1947, is amended to read as follows:

"**89-325. Earmarked revenue fund.** *All license and permit fees and fines collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in the administration of this chapter.*"

Approved March 25, 1975.

CHAPTER NO. 148

AN ACT TO AMEND SECTION 32-2119, R.C.M. 1947, TO PROVIDE A DEFINITION OF FLAG PERSON AND FLAG VEHICLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2119, R.C.M. 1947, is amended to read as follows:

"**32-2119. Official traffic-control devices — traffic-control signal — railroad sign or signal — flag person — flag vehicle.** (a) Official Traffic-control Devices. All signs, signals, markings, and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) Traffic-control Signal. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(c) Railroad Sign or Signal. Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(d) Flag person. Any person who directs, controls or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising his duty as a result of a planned vehicular traffic hazard, shall be equipped as required by the rules and regulations of the Montana department of highways.

(e) Flag vehicle. Any vehicle equipped as required by law or Montana department of highways regulations to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs shall be removed."

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Approved March 25, 1975.

CHAPTER NO. 149

AN ACT TO ADD A NEW SECTION TO TITLE III, CHAPTER 12, R.C.M. 1947, TO AUTHORIZE THE DIRECTOR OF AGRICULTURE TO ENTER INTO AGREEMENTS WITH OTHER AGENCIES OF GOVERNMENT BOTH STATE AND FEDERAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 3-1219 that reads as follows:

3-1219. Cooperation — agreements with other governmental agencies. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter.

Approved March 25, 1975.

CHAPTER NO. 150

AN ACT TO PROVIDE FOR SERVICES OF A HORTICULTURAL INSPECTOR UPON REQUEST AND PAYMENT OF COSTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 3-1201.2 that reads as follows:

3-1201.2. Request for inspector's services — costs — certificate of inspection. Any person may request, upon the payment of actual costs to the department, the services of a horticultural inspector to inspect and certify plant products. Subsequent to inspection such horticultural inspector may issue to the person a certificate of inspection signed by him covering any plant product in compliance with rules of the department.

Approved March 25, 1975.

CHAPTER NO. 151

AN ACT TO AMEND SECTION 3-1212, R.C.M. 1947, TO REQUIRE

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THAT A NURSERYMAN'S LICENSE BE OBTAINED FOR EACH PLACE OF BUSINESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1212, R.C.M. 1947, is amended to read as follows:

"**3-1212. License required of nurserymen— application and payment of fees.** (1) A person, before engaging in the business of selling, dealing in, or importing nursery stock into this state for sale or distribution; or acting as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock; or soliciting orders for the purchase of nursery stock must obtain a license *for each place of business* from the department. A person may not falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.

(2) The department shall provide application forms for prospective licensees. Applications for licenses may be made at any time before engaging in business, except seasonal nurserymen must make application at least thirty (30) days in advance of doing business in this state.

(3) Licenses shall be in the name of the person licensed, and shall indicate the purpose for which issued and the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by an agent, salesman, or solicitor. Licenses, except seasonal nurserymen's licenses, shall bear the date of issue and expire July 1 next following the date of issue. Seasonal nurserymen's licenses shall bear the date of issue and expire on the date provided on the license by the department.

(4) The license fee is fifteen dollars ($15) a year for a general nursery, dealing in all kinds of nursery products; ten dollars ($10) a year for a nursery dealing in small fruits, ornamental shrubs, bulbs, and perennials; five dollars ($5) a year for a nursery dealing in bulbs and perennials only; and fifteen dollars ($15) a year for seasonal nurserymen. Agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's licenses, free of charge, upon the request of the licensee."

Approved March 25, 1975.

CHAPTER NO. 152

AN ACT TO AMEND SECTION 26-301, R.C.M. 1947, TO DELETE A RESTRICTION FOR HUNTING MIGRATORY WATERFOWL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-301, R.C.M. 1947, is amended to read as follows:

"**26-301. Restrictions of manner of taking and possessing fish**

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and game and powers of commission relating thereto. (1) It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any *upland* game birds, or game or fur-bearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or fur-bearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) The state fish and game commission shall have the power to desig-

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nate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the land owner and in possession of the hunter.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Approved March 25, 1975.

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CHAPTER NO. 153

AN ACT TO AMEND SECTIONS 32-2102, 32-2128, 32-2175 AND 32-21-132, R.C.M. 1947, REDEFINING AND BROADENING THE DEFINITION OF EMERGENCY VEHICLES, GOVERNING THE OPERATION OF POLICE AND AUTHORIZED EMERGENCY VEHICLES, GOVERNING THE OPERATION OF VEHICLES ON APPROACH OF POLICE VEHICLES OR AUTHORIZED EMERGENCY VEHICLES AND PROVIDING FURTHER ADDITIONAL LIGHTING EQUIPMENT AND RESTRICTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2102, R.C.M. 1947, is amended to read as follows:

"**32-2102. Definitions — vehicle — motor vehicle — motorcycle — motor-driven cycle — police vehicle — authorized emergency vehicle — emergency service vehicle — school bus — bicycle — special mobile equipment.** (a) Vehicle. Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(b) Motor Vehicle. Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(c) Motorcycle. Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

(d) Motor-Driven Cycle. Every motorcycle, including every motor scooter, with a motor which produces not to exceed five (5) horsepower, and every bicycle with motor attached.

(e) Police Vehicle. Any vehicle used in the service of any law enforcement agency.

(f) Authorized Emergency Vehicles. Vehicles of the fire department, fire patrol and such ambulances and emergency vehicles as are designated or authorized by the board.

(g) Emergency Service Vehicles. Emergency service vehicles of state, county, or municipal departments or public service vehicles, which, by the nature of their operation, cause a vehicular traffic hazard; or authorized tow cars.

(h) School Bus. Every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

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(i) Bicycle. Every device propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is more than twenty (20) inches in diameter.

(j) Special Mobile Equipment. Every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus and concrete mixers. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this section."

Section 2. Section 32-2128, R.C.M. 1947, is amended to read as follows:

"**32-2128. Police vehicles and authorized emergency vehicles.** (a) The driver of *a police vehicle or* authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of *a police vehicle or* authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this act;

2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

3. Exceed the speed limits so long as he does not endanger life or property;

4. Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to *a police vehicle or* authorized emergency vehicle shall apply only when such *vehicles are* making use of audible and visual signals meeting the requirements of section 32-21-132, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of *a police vehicle or* authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others."

Section 3. Section 32-2175, R.C.M. 1947, is amended to read as follows:

"**32-2175. Operation of vehicles on approach of police vehicles or authorized emergency vehicles.** (a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of section 32-21-132, or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every

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other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the *police vehicle or* authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrolman.

(b) This section shall not operate to relieve the driver of *a police vehicle or* authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway."

Section 4. Section 32-21-132, R.C.M. 1947, is amended to read as follows:

"**32-21-132. Audible and visual signals on vehicles.** *(a) A police vehicle shall be equipped with a siren capable of giving an audible signal and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles, the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.*

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, *and an alternately flashing or rotating red light as specified herein.*

(c) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(d) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(e) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this act be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles, the obligation to yield right-of-way and/or to stop and to proceed past such signal

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or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(f) Blue, red and amber lights required in subsections (a), (b) and (c) of this act shall be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two (2) alternately flashing lights of the specified color located at the same level and to the rear two (2) alternately flashing lights of the specified color located at the same level or as an alternative, one (1) rotating light of the specified color, mounted as high as is practicable which shall be both visible front and rear. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The use of blue lights as required in subsection (a) of this act shall be restricted to police vehicles as defined in section 32-2102, R.C.M. 1947."

Approved March 25, 1975.

CHAPTER NO. 154

AN ACT TO AMEND SECTIONS 82-1502, 82-1506, 82-1507, AND 82-1517, R.C.M. 1947, AND TO UPDATE THE AUTHORITY OF THE HAIL BOARD BY INCREASING THE AUTHORIZED LEVY, MAXIMUM INSURANCE, AND RESERVE FUND AND PROVIDING FOR ANNUAL INCREASES IN RESERVE FUND WHEN NECESSARY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1502, R.C.M. 1947, is amended to read as follows:

"**82-1502. Maximum insurance.** *When the fund is determined actuarily sound, as provided in section 3 of this act, the board may write not more than twenty-four dollars ($24) insurance* on each acre of grain, which is on nonirrigated land, and not more than *forty-eight dollars ($48)* per acre on irrigated land. When more than one party desires hail insurance on the same crop each shall be entitled to the share of the maximum provided per acre as represented by his interest in the crop. Either party may insure his share in the crop for any amount up to and including the maximum per acre if the others waive their right to insure."

Section 2. Section 82-1506, R.C.M. 1947, is amended to read as follows:

"**82-1506. Tax for hail insurance — limitation on levy — liens, effect of — mortgages — levies, when payable — hail insurance districts — rates.** (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate as near as may be possible, the amount required to pay all losses, interest

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on warrants and costs of administration, and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this act, to the state department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis. It is hereby provided, however, that such tax shall not exceed in any one (1) year the sum of *two dollars and forty* cents *($2.40)* per acre on lands sown to grain crops on nonirrigated lands, and the sum of *four* dollars and *eighty* cents *($4.80)* per acre on irrigated lands, also it shall not exceed *two dollars and forty* cents *($2.40)* per acre on lands producing hay crops; and provided further, that if the tax required to pay the estimated losses, interest on warrants and costs of administration be less than *one dollar and twenty* cents *($1.20)* per acre on lands sown to grain crops on nonirrigated lands and *two dollars and forty* cents *($2.40)* per acre on irrigated lands, and a proportionate amount on lands sown to hay crops, the said board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

(2) In addition to the lien created above on the land of the insured, the levy for such hail insurance shall also constitute a lien on the crops insured with the exception that the said crop lien shall not apply to owners of unencumbered land, or on the land or crops of those who pay cash for hail insurance. The applications of these shall not be filed with the county clerk and recorded as provided for in section 82-1503.

The crop lien mentioned above shall be included in all applications for hail insurance and shall be enforced, as provided in sections 82-1509 and 82-1510, against all insured, except those owning unencumbered land or those who have paid cash for hail insurance.

(3) The state department of revenue is hereby empowered and it is made its duty to prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively shall be chargeable to the lands of each taxpayer who shall elect to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. Provided, however, that the lien as provided above shall in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured, by the county treasurer in the same manner as are all other notices of taxes due. Said assessment shall be payable at the office of the county treasurers of each respective county. All insurance levies whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full, and not in semiannual payments, on or before November 30th of each year in which such levies are made.

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(4) The state board of hail insurance may when they deem it advisable establish as many districts as it deems advisable and may maintain maximum rates in various parts of the state which rates shall be commensurate with the risk incurred as nearly as they can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest shall not be less than *one dollar and twenty* cents *($1.20)* per acre on lands sown to grain crops, and a proportionate amount on lands sown to hay crops.

Notice of the various rates established for any year shall be plainly printed on the application for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the state board of hail insurance for each of the various districts as established, in such proportions as will in their judgment be fair and equitable."

Section 3. Section 82-1507, R.C.M. 1947, is amended to read as follows:

"**82-1507. Scope and object of levy — reserve.** (1) In making the levy provided in the preceding section the state board of hail insurance shall provide for:

(a) The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

(b) For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve.

(c) For the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants and losses as the same shall be settled and adjusted by the said board including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

(d) If at the end of any hail insurance season the state board of hail insurance determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made, and which funds are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the state board of hail insurance may, at its discretion, refund to the farmers insured for the said year, on a pro rata or percentage basis the excess.

(2) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it shall not increase the levy enough in any year so that such addition to the reserve will exceed five per cent (5%) of the maximum risk written for that year.

(3) The reserve fund shall not exceed four million dollars ($4,000,000) prior to January 1, 1976. On January 1, 1976 and thereafter the maximum permissible reserve fund shall be established as set forth in subsection (4) of this section.

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(4) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(5) The reserve hereby created shall be deposited in the agency fund and the state board of hail insurance is hereby granted the power to draw from its moneys in said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses, and provided further, that whenever there are no unpaid losses for prior years and whenever in any one (1) year the cost of administration, interest and losses for the current year shall be less than the sum of sixty cents (60¢) per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the state board of hail insurance shall not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance."

Section 4. Section 82-1517, R.C.M. 1947, is amended to read as follows:

"**82-1517. Payment of losses.** (1) The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the losses as follows: From the amount of the loss as adjusted for each claimant the state board of hail insurance shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year, and shall make settlement within forty (40) days from the time loss is sustained in the following manner: By paying, either by registered warrant or otherwise if funds are immediately available, fifty per cent of the total loss as agreed on, less, however, the maximum rate of assessment; balance to be paid at the expiration of the hail season.

(2) The state board of hail insurance shall, on or before November first, order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The state board of hail insurance shall then order payment for the balance of the adjustment which payment shall be sent to the claimant; provided, however, that in no case shall the payment for loss exceed *twenty-four* dollars *($24)* per acre for grain crops on nonirrigated lands, and *forty-eight* dollars *($48)* per acre on irrigated lands, and not to exceed *twenty-four* dollars *($24)* per acre on hay crops; provided, further, that no claimant shall receive payment for any loss incurred where said loss does not equal or exceed five per cent (5%) of the total value of the crop insured. Also if the losses in any year should exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved, and the unpaid balance of said losses shall be paid out of the reserve without interest in such order as the state board of hail insurance shall direct, when in the judgment of the said board there are sufficient moneys to provide for the payment of the same and other items payable

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out of said reserve. In any year the state board of hail insurance may by resolution authorize its chairman and secretary to borrow as needed from any person, bank or corporation such sum or sums of money as the state board may deem necessary to carry on the business of the department and for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this act, the state board of hail insurance shall cause warrants to be drawn and said warrants shall bear interest at not to exceed six per cent (6%) per annum and said warrants and the interest thereon shall be paid out of funds from the state hail insurance department as they are collected from the various counties in the state. The state board of hail insurance shall not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer."

Approved March 25, 1975.

CHAPTER NO. 155

AN ACT TO AMEND SECTIONS 3-1201.1, 3-1209, 3-1408, 3-3201 AND 3-3311, R.C.M. 1947, TO CORRECT OMISSIONS, GRAMMATICAL, AND NUMBERING ERRORS AND PROVIDE FOR INSPECTION FEES TO BE PAID TO THE DEPARTMENT OF AGRICULTURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1201.1, R.C.M. 1947, is amended to read as follows:

"**3-1201.1. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Person" means a person, firm, or corporation.

(2) "Seasonal nurseryman" means a person engaged in the business of selling, dealing in, or importing into the state for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

(3) "Nursery stock" means botanically classified hardy perennial or biennial *plants;* trees; shrubs; vines; plants, either domesticated or wild; cuttings; grafts; scions; buds; bulbs; rhizomes or roots of them; and other plants and plant parts for, or capable of, propagation. The term does not include vegetable, field, or flower seed, or corms and tubers."

Section 2. Section 3-1209, R.C.M. 1947, is amended to read as follows:

"**3-1209. Right to hold nursery stock for inspection.** No person is liable to any other person for any damage to any nursery stock caused by holding it to await the certificate of the department."

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Section 3. Section 3-1408, R.C.M. 1947, is amended to read as follows:

"**3-1408. Rules for enforcement — fees.** The department may adopt rules necessary for the enforcement of this act. *The department may adopt rules to establish fees for inspection under this act.*"

Section 4. Section 3-3201, R.C.M. 1947, is amended to read as follows:

"**3-3201. "Itinerant merchant" defined.** For the purpose of this chapter, "itinerant merchant" means a person who buys, offers to buy, sells, or offers to sell in this state, at wholesale or retail, any produce as defined by section 3-3301, who does not hold a license under the provisions of chapter *33* of this Title, and transports the produce in this state by use of a motor vehicle, or by any other method of transportation, except as otherwise provided, or who has not secured a permit of exemption."

Section 5. Section 3-3311, R.C.M. 1947, is amended to read as follows:

"**3-3311. Disposition of license fees.** All license fees received by the department under this chapter shall be paid into the state treasury and deposited in *the general fund.*"

Approved March 25, 1975.

CHAPTER NO. 156

AN ACT AMENDING SECTION 89-885, R.C.M. 1947, TO PLACE AN AFFIRMATIVE BURDEN OF PROOF ON APPLICANTS FOR WATER RIGHTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-885, R.C.M. 1947, is amended to read as follows:

"**89-885. Criteria for issuance of permit.** The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved*;*

(6) an applicant for an appropriation of fifteen (15) cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected."

Approved March 25, 1975.

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CHAPTER NO. 157

AN ACT TO AMEND SECTION 26-104.6, R.C.M. 1947, TO AUTHORIZE THE FISH AND GAME COMMISSION TO UTILIZE INSTALLMENT CONTRACTS TO FACILITATE THE ACQUISITION OF LANDS AND WATERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-104.6, R.C.M. 1947, is amended to read as follows:

"26-104.6. Acquisition and sale of lands or waters by commission. (1) The commission may acquire by purchase, condemnation, lease, agreement, gift, or devise, and may acquire easements upon lands or waters for the purposes listed in this subsection. The commission may acquire, develop, operate, and maintain acquired lands or waters:

(a) For fish hatcheries, nursery ponds, or game farms;

(b) As lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) For public hunting, fishing, or trapping areas;

(d) To capture, propagate, transport, buy, sell, or exchange any game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species;

(e) To extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The commission may dispose of lands and waters acquired by it on those terms after that public notice, and without regard to other laws which provide for sale or disposal of state lands, and with or without reservation, as it considers necessary and advisable. Notice of sale describing the lands or waters to be disposed of shall be published once a week for three (3) successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated, or if no newspaper is published in that county then in any newspaper with general circulation in that county. The notice shall advertise for cash bids to be presented to the commission or the director within thirty (30) days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to ten percent (10%) of the amount bid. The highest bid shall be accepted upon payment of the balance due within ten (10) days after mailing notice by registered mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification. The commission shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the

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commission. The commission shall convey the lands and waters by deed without covenants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the chairman of the commission. The deed shall be attested by the secretary of the commission, but need not be acknowledged.

(3) Notwithstanding the provisions of section 82-1918, R.C.M. 1947, the commission is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals, and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by commission and appropriated by the legislature."

Approved March 25, 1975.

CHAPTER NO. 158

AN ACT AMENDING SECTION 84-4905, R.C.M. 1947, TO PROVIDE THAT ADJUSTED GROSS INCOME SHALL NOT INCLUDE BENEFITS PAID TO RETIRED FIREMEN, DISABLED FIREMEN, AND WIDOWS AND ORPHANS FROM FIRE DEPARTMENT RELIEF ASSOCIATION FUNDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4905, R.C.M. 1947, is amended to read as follows:

"84-4905. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of another state or territory, or county, municipality, district, or other political subdivision thereof:

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof:

(b) All benefits received under the Federal Employees Retirement Act not in excess of three thousand six hundred dollars ($3,600).

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(c) All benefits paid under the Montana Teachers Retirement Act which are specified as exempt from taxation by section *75-6215.*

(d) All benefits paid under the Montana Public Employees Act which are specified as exempt from taxation by section 68-1303.

(e) All benefits paid under the Montana Highway Patrol Retirement Act which are specified as exempt from taxation by section 31-221.

(f) Montana income tax refunds or credits thereof.

(g) All benefits paid under sections 11-1925, 11-1926, and 11-1927 to retired and disabled firemen, their surviving spouses and orphans.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect, but with respect to which the election provided for under section 84-1501.2, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distribution from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect."

Section 2. This act shall be effective for all taxable years commencing with the taxable year 1975.

Approved March 26, 1975.

CHAPTER NO. 159

AN ACT TO AMEND SECTION 75-8107, R.C.M. 1947, TO CHANGE THE TERM OF OFFICE FOR TRUSTEES OF COMMUNITY COLLEGES FROM SEVEN (7) TO THREE (3) YEARS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-8107, R.C.M. 1947, is amended to read as follows:

"**75-8107. Election of trustees — districts from which elected — and terms of office.** The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven (7) trustees shall be elected at large, except that should there be in such proposed community college district one (1) or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43%) and not more than fifty per cent (50%) of the total population of

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the proposed district, as determined by the last census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder of the proposed community college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the population of the proposed district, then four (4) trustees shall be elected from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed community college district. If the trustees are elected at large throughout the entire proposed community college district, the *three* receiving the greatest number of votes shall be elected for a term of *three (3)* years, the *two* receiving the next greatest number of votes, for a term of *two (2)* years, *and* the *two* receiving the next greatest number of votes, for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the *three* who shall serve for *three (3)* years, the *two* who shall serve for *two (2)* years, *and* the *two* who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of *three (3)* years each."

Section 2. This act shall become effective upon passage and approval.

Approved March 26, 1975.

CHAPTER NO. 160

AN ACT TO AMEND SECTIONS 16-2618 AND 79-307, R.C.M. 1947, RELATING TO SECURITY REQUIREMENTS FOR THE DEPOSIT OF PUBLIC FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2618, R.C.M. 1947, is amended to read as follows:

"**16-2618. Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent banks, building and loan associations or savings and loan associations located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank, building and loan association or savings and loan association such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such

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public moneys not necessary for immediate use by such county, city or town with any bank, building and loan association or savings and loan association authorized herein above in a savings or time deposit; provided that the bank or banks or building and loan association or savings and loan association in which the money is deposited shall pay on the moneys no less than the rate of interest as is paid on money from private sources on the same terms. Refusal of any bank, building and loan association or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the ratable distribution of said moneys as set forth in subsection (4) of this act, and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of *those enumerated in section 79-307.*

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the department of intergovernmental relations. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the abovementioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) (a) Demand deposits shall be placed only in banks. When more than one bank is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such demand deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such demand deposits shall be maintained.

(b) Such public moneys not necessary for immediate use by such county, city or town which are not invested in direct obligations of the United States government as authorized herein shall be placed in time or savings deposits with any bank, building and loan association or savings and loan association in the county, city or town. When more than one bank, building and loan association or savings and loan association is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such funds shall

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be distributed ratably among all of such banks, building and loan associations and savings and loan associations qualifying therefor, substantially in proportion to the total property taxes paid in such county or the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association willing to receive such time or savings deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such time or savings deposits among all of the banks, building and loan associations and savings and loan associations qualified to receive the same as in this act provided, to the end that an equitable distribution of such time or savings deposits shall be maintained.

(5) Whenever it shall come to the attention of the department of intergovernmental relations that the funds of any county, city or town are not properly distributed as provided in this act, the department of intergovernmental relations shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the department of intergovernmental relations to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank, building and loan associations or savings and loan associations exists in the county, city or town, or if any banks, building and loan associations or savings and loan associations existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any banks, building and loan associations or savings and loan associations within said county, city or town, shall be deposited under the terms of this act, in the banks, building and loan associations or savings and loan associations most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any banks, building and loan associations or savings and loan associations receiving such deposits, shall, through its president and cashier or secretary, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank, building and loan association or savings and loan association during the quarter, the amount of daily balance in dollars, and the amount of interest by such banks, building and loan associations or savings and loan associations credited or paid therefor, and showing that neither such bank, building and loan association or savings and loan association nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank, building and loan association or savings and loan association. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, building and loan association or savings and loan association, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

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(6) Except as provided in subsection (8) of this section, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank, building and loan association or savings and loan association pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, building and loan association or savings and loan association, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank, building and loan association or savings and loan association.

(8) Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school district in savings or time deposits in a state or national bank, building and loan association or savings and loan association insured by the F.D.I.C. or the F.S.L.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050."

Section 2. Section 79-307, R.C.M. 1947, is amended to read as follows:

"**79-307. Security for deposits of public funds.** The following kinds of securities may be pledged *or guarantees may be issued* to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

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(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration (not including insured mortgages);

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state, issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(6) obligations of housing authorities of the state, secured by a pledge of annual contributions or by a loan agreement, made by the United States or any agency thereof, providing for contributions or a loan sufficient, with other funds pledged, to pay the principal of and interest on the obligations when due;

(7) general obligation bonds of other states and of municipalities and counties of other states*; and*

(8) undertaking or guarantees issued by a surety company authorized to do business in the state."

Approved March 26, 1975.

CHAPTER NO. 161

AN ACT TO AMEND SECTION 84-1504, R.C.M. 1947, TO PROVIDE FOR AN AUTOMATIC EXTENSION OF ONE (1) TO SIX (6) MONTHS FOR THE FILING OF A CORPORATION LICENSE TAX RETURN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1504, R.C.M. 1947, is amended to read as follows:

"**84-1504. Computation of license tax—return of net income to be filed—definitions.** (1) The license fee shall be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax purposes.

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In the event a corporation changes its taxable year, it shall promptly notify the state department of revenue.

(2) Every corporation, subject to the license fee imposed under this chapter, shall for each taxable period render a true and accurate return of its net income for the taxable period in the manner and form to be prescribed by the state department of revenue, and containing such facts, data and information as are appropriate and in the opinion of the state department of revenue necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by one (1) of the following: the president, the vice-president, the treasurer, the assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the department of revenue on or before the fifteenth day of May following the close of the calendar year, and if reporting on a fiscal year basis the return shall be filed with the department on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return *of one (1) to six (6) months* following the date prescribed for filing of its tax return. The application is to be made on such forms as the department of revenue shall prescribe. The department of revenue may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. The term gross income means all income recognized in determining the corporation's gross income for federal income tax purposes; but shall include interest exempt from federal income tax. No corporation is exempt from the corporation license tax unless specifically provided for under section 84-1501. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under section 84-1501 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal internal revenue code in effect for the taxable year. The term "net income" means the gross income of the corporation less the deductions set forth in section 84-1502.

(3) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders."

Approved March 26, 1975.

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CHAPTER NO. 162

AN ACT TO REQUIRE NOTICE OF TAX SALE TO HOLDERS OF PERFECTED SECURITY INTERESTS IN CERTAIN PERSONAL PROPERTY, AMENDING SECTION 84-4202, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4202, R.C.M. 1947, is amended to read as follows:

"**84-4202. Duty of treasurer.** The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of the report prescribed by section 84-4201, R.C.M. 1947, to notify the person or persons against whom the tax is assessed *and any person who has a properly perfected security interest of record with the registrar of motor vehicles of the state of Montana* that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lien holder, if any."

Approved March 26, 1975.

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CHAPTER NO. 163

AN ACT AMENDING SECTION 84-6701, R.C.M. 1947, TO INSERT NECESSARY LANGUAGE IN THE ADOPTION PARAGRAPH OF THE MULTISTATE TAX COMPACT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. The first paragraph of section 84-6701, R.C.M. 1947, (the Multistate Tax Compact) is amended to read as follows:

"**84-6701. Compact adopted—text.** The "Multistate Tax Compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein, *in the form substantially as set forth herein below.* Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted."

Section 2. This act is effective upon passage and approval.

Approved March 26, 1975.

CHAPTER NO. 164

AN ACT TO CHANGE THE LAWS RELATING TO RESIDENCE AND DOMICILE IN ORDER TO REMOVE SEXUAL DISCRIMINATION; AMENDING SECTIONS 23-3022, 75-8703, 75-8704 AND 83-303, R.C.M. 1947; AND REPEALING SECTION 36-102, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3022, R.C.M. 1947, is amended to read as follows:

"**23-3022. Residence, rules for determining.** For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed

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or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a *person's* family resides is presumed *that person's* place of residence. However, a *person* who takes up or continues *a* residence at a place other than where his family *resides* with the intention of remaining is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election."

Section 2. Section 75-8703, R.C.M. 1947, is amended to read as follows:

"**75-8703. Presumptions as to domicile.** Unless the contrary appears to the unit registering authority, it is presumed that:

(1) The domicile of a minor is that:

(a) *of the parents, or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody, or if neither parent has legal custody the parent with whom the minor customarily resides; or*

(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state; or

(2) *A* resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of four (4) years after marriage.

(3) Except as provided in the next subsection, residence is not gained or lost because of relocation as a member of the armed forces of the United States.

(4) Residence may be gained by a member of the armed forces of the United States, his spouse, or his children by living in Montana for one (1) year, and complying with the provisions of this section.

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(5) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(6) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(7) Montana high school graduates are resident students of the system for four (4) consecutive years of attendance if:

(a) they apply for admittance to the system within one (1) year after graduation; or

(b) their parents *or the parent having legal custody, or if neither parent has legal custody the parent with whom they customarily reside* have resided in Montana in one (1) of the two (2) years immediately preceding the graduation.

(8) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child or both. If such person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes, or files estimates of such taxes, or is subject to withholding of said taxes, and renounces his residency in any other state, and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate, so long as he continues his Montana domicile. In the administration of this paragraph, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 3. Section 75-8704, R.C.M. 1947, is amended to read as follows:

"**75-8704. Evidence as to domiciliary intent — changes in status.** (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of nonMontana domicile.

(b) A person must intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary:

(a) A written statement of the evidence shall be filed with the registering authority of the unit.

(b) Changes in classification shall be in writing signed by the registering authority, and shall take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if his parents *or the parent having legal custody, or if neither parent has legal custody the parent with whom he customarily resides* or legal guardian or person

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having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in his or his dependents classification for tuition and fee purposes unless he completes twelve (12) continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system:

(a) Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of his decision and a complete file on the student to the executive secretary.

(i) The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons.

(b) Within thirty (30) days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of his decision.

(c) The executive secretary's decision may be appealed to the regents if the regents agree to entertain such an appeal."

Section 4. Section 83-303, R.C.M. 1947, is amended to read as follows:

"**83-303. Residence, rules for determining.** Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained.

4. *The residence of his parents, or if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody, or if neither parent has legal custody the parent with whom he customarily resides, is the residence of the unmarried minor child. In case of a controversy the district court may declare which parental residence is the residence of an unmarried minor child.*

5. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

6. The residence can be changed only by the union of act and intent."

Section 5. Section 36-102, R.C.M. 1947, is repealed.

Approved March 26, 1975.

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CHAPTER NO. 165

AN ACT TO AMEND SECTIONS 11-1601, 11-1602 AND 93-411 TO REDESIGNATE POLICE COURTS AND POLICE JUDGES AS CITY COURTS AND CITY JUDGES, TO PROVIDE FOR THE JURISDICTION OF CITY COURTS AND FOR THE TRAINING OF CITY JUDGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1601, R.C.M. 1947, is amended to read as follows:

"**11-1601. City court established.** A *city* court is established in each city or town, which court must always be open, except upon nonjudicial days, and upon such days it may transact criminal business only."

Section 2. Section 11-1602, R.C.M. 1947, is amended to read as follows:

"**11-1602. Jurisdiction of city courts.** The *city* court has concurrent jurisdiction with the *justices' court* of all misdemeanors punishable by fine not exceeding five hundred dollars ($500), or by imprisonment not exceeding six (6) months, or by both fine and imprisonment *under the following conditions:*

(1) Any action charging the commission of an offense within the city or town limits in violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) Any other action brought for violation of a state law within the city shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

(3) Application for search warrants and complaints charging the commission of a felony may be filed in the city or town court and when they are so filed the city judge shall have the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court."

Section 3. Section 93-411, R.C.M. 1947, is amended to read as follows:

"**93-411. City courts.** *(1) City* courts are established in incorporated cities and towns, and their organization, jurisdiction, and powers are provided for in Title 11. *Police court is hereby renamed city court and all references to police court or police judges in sections of the Revised Codes of Montana shall be considered amended to read city court, or city judge.*

(2) There shall be an annual training session for all elected and

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appointed judges. This training session, which may be held in conjunction with the Montana magistrates' association convention, shall be supervised by the supreme court. Mileage and per diem shall be paid the elected or appointed judge for attending the course and shall be a proper charge against the city wherein the judge holds court."

Approved March 26, 1975.

CHAPTER NO. 166

AN ACT TO INSURE THAT ANYTHING RELEVANT TO THE DETERMINATION OF REASONABLE CLASSIFICATIONS AND GRADE LEVELS FOR STATE EMPLOYEES SHALL BE A NEGOTIABLE ITEM APPROPRIATE FOR CONSIDERATION UNDER THE PROVISIONS OF THE COLLECTIVE BARGAINING ACT FOR PUBLIC EMPLOYEES; AMENDING SECTION 59-907, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-907, R.C.M. 1947, is amended to read as follows:

"**59-907. Review of positions — change in classification.** The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities; provided, however, employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions. *Anything relevant to the determination of reasonable classifications and grade levels for state employees shall be a negotiable item appropriate for the consideration of the state and exclusive representatives under the provisions of Title 59, chapter 16, R.C.M. 1947."*

Section 2. This act is effective upon passage and approval.

Approved March 26, 1975.

CHAPTER NO. 167

AN ACT TO REQUIRE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PAY A MINIMUM OF FOUR DOLLARS ($4) PER DAY FOR EACH ELIGIBLE CHILD ENROLLED IN A LICENSED DAY CARE FACILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 10-812 that reads as follows:

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10-812. Payments for eligible children. The department of social and rehabilitation services shall pay to a licensed day care facility, for each child eligible to receive public financial support, not less than four dollars ($4) for each day the child attends the facility. For those day care facilities which meet federal requirements the department shall pay an additional amount, not less than one dollar ($1) per day, for each eligible child.

Approved March 26, 1975.

CHAPTER NO. 168

AN ACT TO REQUIRE CARRIERS TO PAY CLAIMS IN FULL NOTWITHSTANDING ANY LIMITATION OF LIABILITY CONTAINED IN ANY CONTRACT EXCEPT AS HEREIN PROVIDED; TO AUTHORIZE IMPOSITION OF ATTORNEY FEES TO THE SUCCESSFUL PARTY WHERE AN AGGRIEVED CONSIGNEE PREDICATES HIS CLAIM IN PART UPON UNJUSTIFIED DELAY IN INVESTIGATION OF THE SAME; TO PERMIT CONSIGNEES TO INSPECT PACKAGES UNDER CERTAIN CONDITIONS; TO MAKE INTRASTATE CARRIERS LIABLE TO THE FULL EXTENT OF LOSSES TO PROPERTY COVERED BY THEM; TO ALLOW RECOURSE TO DELIVERING CARRIERS WHO PAY CONSIGNEES' CLAIMS; AND TO ADOPT APPROPRIATE PROVISIONS OF THE INTERSTATE COMMERCE ACT RELATING TO THOSE SUBJECTS; REPEALING SECTION 8-812, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 8-812.1 that reads as follows:

8-812.1. Liability of inland carriers for loss. Any common carrier, railroad, or transportation company subject to the provisions of this act receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state of Montana when transported on a through bill of lading, and no contract, receipt, rule, regulation or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in Montana to a point in Montana, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lad-

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ing has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state of Montana when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the public service commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void, except:

(1) An inherent defect, vice, weakness, or a spontaneous action of the property itself;

(2) The act of a public enemy of the United States, or of this state;

(3) The act of the law;

(4) An irresistible superhuman cause; or

(5) The act or default of the shipper or owner or for natural shrinkage.

Provided that the provisions hereof respecting liability for full actual loss, damage or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or buses; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the public service commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as related to values, be held to be a violation of this act; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

Provided further, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action.

Provided further, that it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise, a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the date when notice in writing is given by

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the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

Provided further, that for the purpose of this section and section 8-812.2, the delivering carrier shall be construed to be the carrier performing the linehaul service nearest to the point of destination.

Provided further, that the liability imposed by this section shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this part provided.

Provided further, that the consignee within fifteen (15) days after delivery must ask for an inspection of any damaged shipment and the carrier must make an inspection within five (5) working days thereafter.

Provided further, that the consignee shall have the opportunity to examine the condition of the package in which the goods are shipped prior to signing the delivery receipt.

Provided further, that the consignee may detain the driver at consignee's expense not to exceed a minimum charge to be fixed by the public service commission while he examines the shipment for possible concealed damage. During such examination, the freight bill may still be noted as to the extent of the damage or loss, if any. If examination discloses damage, the examination charge may be included in the consignee's claim for damage in proportion to the amount of the claim.

Provided further, that carriers must acknowledge receipt of each claim within thirty (30) days and promptly investigate each claim, and either pay or decline the claim within one hundred twenty (120) days from the date of receipt thereof or provide an explanation for the delay in disposition. An assertion that the claim is still being investigated shall not constitute sufficient explanation.

Provided further, that in the event a claimant or a carrier successfully prosecutes or defends a claim for loss or damage under this section, wherein it is alleged the carrier has not disposed of the claim within one hundred twenty (120) days or explained the delay, and providing further, that the claimant has inquired of the carrier regarding the delay, in writing, within the one hundred twenty (120) day period, then the court exercising jurisdiction may, at its discretion, award reasonable attorney fees to the successful party but not exceed five hundred dollars ($500).

Section 2. There is a new R.C.M. section numbered 8-812.2 that reads as follows:

8-812.2. Liability between carriers. The common carrier, railroad, or transportation company issuing such receipt or bill of lading, or delivering such property so received and so transported shall be entitled to recover from the common carrier, railroad, transportation company, on whose line the loss, damage or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

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Section 3. Section 8-812, R.C.M. 1947, is repealed.

Approved March 26, 1975.

CHAPTER NO. 169

AN ACT TO AMEND SECTION 82-1202, R.C.M. 1947, RELATING TO THE POWERS OF THE STATE FIRE MARSHAL; AND REPEALING SECTION 82-1202.2, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1202, R.C.M. 1947, is amended to read as follows:

"**82-1202. Powers of the state fire marshal.** The state fire marshal shall:

(1) Make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection and to the public safety.

(2) Make at least one inspection during every year, of each unit of the Montana university system, and submit a copy of the report to the executive secretary of the university system with recommendations in regard to fire prevention, fire protection and to the public safety.

(3) Inspect public, business, or industrial buildings and require conformance to law or rules promulgated under the provisions of this act.

(4) Do all things necessary and convenient for carrying into effect the fire prevention laws of this state governing this act and may, adopt necessary rules for safeguarding lives and property from the hazards of fire and explosion. *Rules shall be adopted as prescribed in the "Montana Administrative Procedure Act".* If fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is compliance with the rules.

(5) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state."

Section 2. Section 82-1202.2, R.C.M. 1947, is repealed.

Approved March 26, 1975.

CHAPTER NO. 170

AN ACT AMENDING SECTION 87-106, R.C.M. 1947, TO INCREASE

THE ALLOWABLE LEVEL OF PAYMENTS THAT MAY BE RECEIVED IN RETIREMENT BENEFITS BEFORE DISQUALIFICATION FOR UNEMPLOYMENT BENEFITS AND FOR RETIRED FEDERAL PERSONNEL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-106, R.C.M. 1947, is amended to read as follows:

"**87-106. Disqualification for benefits.** An individual shall be disqualified for benefits—

(a) If he has left work without good cause attributable to the employment for a period of not less than two (2) nor more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the division according to the circumstances in each case; but, he shall not be disqualified if the division finds that:

(1) He left his employment because of personal illness or injury not associated with misconduct, or left his employment upon the advice of a licensed and practicing physician, and after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment, for a period of not less than two (2) nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the division in each case according to the seriousness of the misconduct.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the division, for a period of twelve (12) months.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the division. Such disqualification shall continue for the week in which such failure occurred and for not less than two (2) nor more than five (5) weeks in addition to the waiting week which immediately follow such week as determined by the division according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

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(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the division finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the division, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for disability under the Workmen's Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States, provided, however, that when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

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(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the division may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individuals shall be denied benefits for any week because he is in training approved by the division, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the division by reason of the application of provisions in subsection (c) of this section or the application of provisions in section 87-105 (c).

(g) Where retired and receiving retirement compensation paid in whole or in part from funds furnished by an employing unit, which when prorated on a weekly basis, exceeds *two (2) times* the average weekly benefit amount paid during the last fiscal year, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 and 87-105. This disqualification *does not apply to retired federal personnel, and* does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(h) For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the division."

Approved March 26, 1975.

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CHAPTER NO. 171

AN ACT AMENDING SECTION 92-1105, R.C.M. 1947, TO REQUIRE COMPENSATION PLAN NO. 3 TO ACTUARIALLY DETERMINE RATES FOR EACH TYPE OF EMPLOYMENT AND TO RETAIN ACTUARIALLY SOUND RESERVES AND TO UTILIZE AN EXPERIENCE RATING SYSTEM FOR EMPLOYERS ENROLLED UNDER IT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-1105, R.C.M. 1947, is amended to read as follows:

"**92-1105. Intent and purpose of plan No. 3.** It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of said plan shall be liable to pay for injuries happening to *its* employees coming under the provisions of the Workmen's Compensation Act.

All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance account in the agency fund.

The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the *division* as a member of a rating organization into classes, whose rates may be readjusted at such times as the *division* as a member of such rating organization may *actuarially* determine. Separate accounts shall be kept of the amounts collected and expended in each class for *actuarially* determining rates but for payment of compensation and dividends the industrial insurance account shall be one and indivisible. The *division* as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of *an actuarially sound* industrial insurance fund, and the creation of *actuarially sound* surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk, and shall *utilize* the experience and information afforded to it as a member of such rating organization.

In addition compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

The *division* in fixing rates shall provide for the expenses of administering the industrial insurance account allowed by law, the disbursements on account of injuries and deaths of employees in each class, an *actuarially sound* catastrophe reserve, reserves *actuarially determined* to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the *division* as a member of such rating organization. *The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended."*

Approved March 27, 1975.

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CHAPTER NO. 172

AN ACT TO AMEND SECTIONS 47-202, 47-204, 47-205, 47-214, AND 47-215, R.C.M. 1947, BEING SECTIONS OF THE MONTANA CONSUMER LOAN ACT, PERMITTING LICENSEES THEREUNDER TO MAKE LOANS NOT EXCEEDING $7,500.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 47-202, R.C.M. 1947, is amended to read as follows:

"**47-202. Definitions.** Unless otherwise clearly indicated by the context, the following words when used in this act, for the purposes of this act, shall have the meanings respectively ascribed to them in this section:

(a) "Person" shall mean individuals, partnerships, associations, corporations and any and all legal entities in the loaning business.

(b) "License" shall mean one or both of the licenses provided for by this act.

(c) "Licensee" shall mean the person holding any such license.

(d) "Commissioner" shall mean the consumer loan commissioner.

(e) "Consumer type loan business" shall mean the business of making loans of *seven* thousand five hundred dollars *($7,500)* or less generally repayable in substantially equal installments."

Section 2. Section 47-204, R.C.M. 1947, is amended to read as follows:

"**47-204. Scope — exemptions — invalidity of contracts in violation.** (a) Scope; prohibiting engaging in the business of making loans of *seven* thousand five hundred dollars *($7,500)* or less, except after having obtained a license; exemptions. On or after July 1, 1959, no person shall engage in the business of making loans or advances of money on credit in amounts of *seven* thousand five hundred dollars *($7,500)* or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance, any charges whether for interest, compensation, consideration, or expense which in the aggregate are greater than ten per cent (10%) per annum, except as provided in and authorized by this act. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, Morris Plan companies, or a person engaged in business as a licensed pawnbroker, or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this act, nor shall any of the provisions of this act apply to any such exempted person.

(b) Evasions. The provisions of subsection (a) shall apply to any person who seeks to evade its applications by any device, subterfuge or pretense whatsoever.

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(c) Invalidity; penalty. Any contract of loan in the making or collection of which any act shall have been done which violates subsection (a) of this section shall be void and the lender shall have no right to collect, receive or retain any principal, interest, or charges whatsoever."

Section 3. Section 47-205, R.C.M. 1947, is amended to read as follows:

"**47-205. When loans in excess of $1,000 by licensee prohibited — supplementary license to make loans up to $7,500.** No licensee under the provisions of this act shall lend money in a total sum greater than one thousand dollars ($1,000) to any borrower or to any borrower and spouse except under the following circumstances and for the following charges: When any person holding a license provided for in section 47-206 desires to make loans for any amount in excess of one thousand dollars ($1,000) but not exceeding *seven* thousand five hundred dollars *($7,500)* the holder of such license provided for in section 47-206 may apply to the commissioner for a supplementary license and pay therefor an additional license fee of seventy-five dollars ($75) per calendar year or one-half (½) of said sum for any period less than six (6) months. The commissioner shall grant, on application, a supplementary license to a holder of a license provided for in section 47-206. Section 47-209 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same. The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in section 47-210 for the first one thousand dollars ($1,000) of the principal amount of any loan and may contract for and receive charges at rates not in excess of ten dollars ($10) per year per one hundred dollars ($100) on that part of the principal amount of any loan exceeding one thousand dollars ($1,000) but not exceeding *seven* thousand five hundred dollars *($7,500).* Said charges shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth (1/30) of a month. Provisions of section 47-210 relating to refunds, fees and charges and the other provisions of this act not inconsistent with this section shall be applicable to loans made under authority of a supplementary license."

Section 4. Section 47-214, R.C.M. 1947, is amended to read as follows:

"**47-214. Insurance written with loans — types and limitation thereon — delivery of insurance policy.** (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

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(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars ($300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance and credit disability insurance. Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars ($300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed *seven* thousand five hundred dollars *($7,500).*

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower."

Section 5. Section 47-215, R.C.M. 1947, is amended to read as follows:

"**47-215. Investigations, when — who may be investigated.** The commissioner or his duly authorized representatives may at any time investigate any transaction with borrowers and may examine the books, accounts and records in this state to discover violations of this act by (1) any licensee (2) any person who advertises for, solicits or holds himself as willing to make loans in amounts of *seven* thousand five hundred dollars *($7,500)* or less, or (3) any person whom the commissioner has reason to believe is violating or is about to violate the provisions of this act."

Approved March 27, 1975.

CHAPTER NO. 173

AN ACT AUTHORIZING THE ESTABLISHMENT OR ACQUISITION

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OF MUSEUMS BY COUNTIES, DEFINING MUSEUMS, PROVIDING FOR APPROPRIATIONS FOR THE SUPPORT THEREOF AND FOR THE LEVY OF TAXES FOR SUCH APPROPRIATIONS, AND AMENDING SECTIONS 16-1163 AND 16-1164, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1163, R.C.M. 1947, is amended to read as follows:

"**16-1163. County commissioners may establish or acquire museums, etc.** The board of county commissioners of *each county* of the state, in addition to all other powers now conferred upon them, shall have authority to *establish* or acquire museums, and collections of exhibits, and articles, matters and things to be included in or added to such museums and collections. *The word "museums" for the purposes of this act shall mean buildings, or parts of buildings, of which a principal purpose is the exhibition of objects of historical interest or of interest in one or more of the arts and sciences."*

Section 2. Section 16-1164, R.C.M. 1947, is amended to read as follows:

"**16-1164. Tax levy for support of museums.** The board of county commissioners of any county now owning, or hereafter acquiring any such museum or collection of exhibits, may make an appropriation in its annual budget for the upkeep, care, maintenance, operation and support thereof, and to meet and take care of such appropriation may annually levy a tax of not to exceed *one (1) mill* on each dollar of the taxable valuation of the property subject to taxation in the county, which levy shall be made at the same time as other levies are made for county and school purposes. The proceeds from the collection of such levy shall be kept in a special fund by the county treasurer and used solely for the purpose for which such levy was made."

Approved March 27, 1975.

CHAPTER NO. 174

AN ACT AMENDING SECTION 75-7803, R.C.M. 1947, TO PROVIDE FOR THE ESTABLISHMENT AND FINANCING OF REGIONAL SPECIAL EDUCATION SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7803, R.C.M. 1947, is amended to read as follows:

"**75-7803. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and co-ordinate the conduct of special education in the state by:

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(1) recommending to the board of *public* education for adoption of those policies necessary to establish a planned and co-ordinated program of special education in the state;

(2) administering the policies adopted by the board of *public* education;

(3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of *public* education;

(4) discovering through observation, examination or testing the children in the state who are in need of special education;

(5) determining the type of instruction required by children needing special education and preparing appropriate curriculum guides for such instruction;

(6) seeking appropriate medical, psychiatric, and psychological assistance from the state department of health and other public agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;

(7) recommending to districts the type of special education class or program needed to serve the special education children of such district;

(8) approving, as they are established or proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of *public* education, and the regulations of the superintendent of public instruction;

(9) providing supervision for and consulting with district superintendents, principals, teachers and trustees;

(10) conducting conferences, offering advice and otherwise co-operating with parents and other interested persons;

(11) acting as the co-ordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education*; and*

(12) establishing regional special education services for children in need of special education in accordance with policies of the board of public education. Funds for such services shall be appropriated to the superintendent of public instruction from state equalization funds and shall be coordinated with other federal, state, and local funds as may be made available to support regional special education programs and services."

Approved March 27, 1975.

CHAPTER NO. 175

AN ACT TO ESTABLISH LIMITATIONS ON THE AMOUNT OF

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INDEBTEDNESS WHICH MAY BE INCURRED BY CITY-COUNTY CONSOLIDATED LOCAL GOVERNMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 16-2010.1 that reads as follows:

16-2010.1. Limit on city-county consolidated indebtedness. No city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, will exceed seven and one-half percent (7 ½%) of the assessed value of the taxable property therein, to be ascertained by the last assessment for state and county taxes; provided, however, that for the purpose of constructing a sewerage system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government, which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness, which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, or for the procurement of a water supply; or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed ten percent (10%), over and above the seven and one-half percent (7 ½%) heretofore referred to, of the assessed value of the taxable property therein as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness, but is merely the changing of the evidence of outstanding indebtedness.

Approved March 27, 1975.

CHAPTER NO. 176

AN ACT TO ESTABLISH A REVOCATION OF A LICENSE OF AN HABITUAL OFFENDER AND A METHOD OF REMOVING POINTS ASSESSED TO AN HABITUAL OFFENDER.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 31-184.1 that reads as follows:

31-184.1. Department to revoke license of habitual offender — method of removal of points upon revocation. Upon receipt of a court order declaring an habitual offender, the department shall revoke the driver's license or driving privilege of the individual named in the order for a period of three (3) years from the date of the order. Additionally,

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the department shall remove from that individual's record those habitual offender points which were certified to the county attorney in the certification required by section 31-178.

Approved March 27, 1975.

CHAPTER NO. 177

AN ACT TO AMEND VOTER REGISTRATION LAWS BY REMOVING LANGUAGE DISCRIMINATING AGAINST STUDENTS IN DETERMINING RESIDENCY; AMENDING SECTION 23-3022, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3022, R.C.M. 1947, is amended to read as follows:

"**23-3022. Residence, rules for determining.** For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a man's family resides is presumed his place of residence. However, a man who takes up or continues his residence at a place other than where his family resided with the intention of remaining is a resident of the place where he resides.

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(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election."

Approved March 27, 1975.

CHAPTER NO. 178

AN ACT AMENDING SECTION 26-345, R.C.M. 1947, PROVIDING A PROCEDURE FOR INITIATION OF REQUESTS FOR CLOSURE OF AREAS BECAUSE OF FIRE DANGER BY BOARDS OF COUNTY COMMISSIONERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-345, R.C.M. 1947, is amended to read as follows:

"**26-345. Fire danger — area closed to hunting and fishing — request by board of county commissioners.** *(1)* When the fire danger becomes so extreme that the governor upon the advice and recommendation of the department of natural resources and conservation closes an area to trespass because of fire danger, that area is automatically closed to hunting or fishing and remains closed so long as the fire closure remains in effect.

(2) A board of county commissioners may initiate a request for a closure by submitting the request to the department. However, the department may adopt reasonable rules specifying the fire prevention and suppression measures that must have been taken by the board before a request may be submitted and considered."

Approved March 27, 1975.

CHAPTER NO. 179

AN ACT TO AMEND SECTION 8-110, R.C.M. 1947, TO EXEMPT FROM THE CLASS C MOTOR CARRIER CERTIFICATE REQUIREMENTS, CARRIERS OPERATING PURSUANT TO THE TERMS AND CONDITIONS OF A CONTRACT FOR THE TRANSPORTATION OF SOLID WASTE WITH THE STATE OR AN AGENCY OR DEPARTMENT THEREOF; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8-110, R.C.M. 1947, is amended to read as follows:

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"**8-110. Certificate required of class C motor carriers — contents of application — fee.** (1) (a) No class C motor carrier as in this act defined, except any class C motor carrier operating pursuant to the terms and conditions of a United States government contract, agency or department thereof, *or of a contract for transporting solid waste with the state or an agency or department thereof,* shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highways or highways over which and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed; or the particular city, town, station, or locality from and/or to which the applicant intends to operate.

3. The kind of transportation, the character of the goods, wares, merchandise, or commodities to be distributed, delivered or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery or collection.

4. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a fee of fifteen dollars ($15.00) to thirty-five dollars ($35.00) to be set by the board based on the number of counties for which the certificate is requested, and an additional sum to be set by the board to pay the cost of publishing notice of hearing in the legal advertising sections of an appropriate newspaper or newspapers.

(2) The transportation for hire of any persons or commodities between any two (2) points within the state of Montana by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government, agency or department thereof, *or the state or an agency or department thereof, for the transportation of solid waste,* shall be deemed a transportation movement subject to the provisions of the Montana Motor Carrier Act, R.C.M. 1947, 8-101 et seq., provided, however, that the presentation of the written contract to the board shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government *or state* contract.

The class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government *or state*

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contract may be issued by the board upon receipt of an executed copy of the United States government *or state* contract. The certificate of public convenience and necessity may be issued thereafter without requiring the board to fix a time and place for public hearing.

The certificate of public convenience and necessity, issued pursuant to the terms of the United States government *or state* contract, is authorized only for the duration of the United States government *or state* contract concerned, provided, however, the certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government *or state* contract."

Section 2. This act is effective upon its passage and approval.

Approved March 27, 1975.

CHAPTER NO. 180

AN ACT TO GENERALLY REVISE THE NURSING PRACTICE ACT BY AMENDING SECTIONS 66-1222, 66-1225, 66-1226, 66-1228, 66-1232, AND 66-1239, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1222, R.C.M. 1947, is amended to read as follows:

"66-1222. Definitions — identification of board when administering act for professional nursing and for practical nursing. Unless the context requires otherwise, in this act:

(1) "Board" means the board of nursing, provided for in section 82A-1602.18 with dual functions in the field of professional nursing and practical nursing. In matters relating to professional nursing the board consists of five (5) members. In matters relating to practical nursing the board consists of eight (8) members. The board of five (5) members may for convenience be referred to as the board followed by the words "professional nursing administration," and the board of eight (8) members may, for convenience, be referred to as the board followed by the words "practical nursing administration."

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Practice of nursing" embraces two (2) classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of an act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health, or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments prescribed by a person li-

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censed in this state to prescribe medications and treatments; requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social science.

(b) "Practice of practical nursing" means the performance for compensation in the care of the ill, injured, or infirm, of acts selected by and performed under the direction of a registered professional nurse, or a person licensed in this state to prescribe medications and treatments; and not requiring the substantial specialized skill, judgment, and knowledge required in professional nursing."

Section 2. Section 66-1225, R.C.M. 1947, is amended to read as follows:

"66-1225. Organization — duties and powers — separation of records responsive to functions of board — dual administrations to be exclusive of each other. (1) The board—practical nursing administration, shall meet annually in the month of July and shall elect from among the eight (8) members a president and a secretary, each of whom is a professional nurse. The board—practical nursing administration, shall hold other meetings when necessary to transact its business. The board —professional nursing administration, shall meet annually in July and shall hold other meetings when necessary to transact its business. A majority of the board, as separately constituted for each administration, including in the majority at least one officer of the board, constitutes a quorum at any meeting; however, when sitting as the practical nursing administration, a quorum consists of a minimum of two (2) practical nurse members and three (3) professional nurse members, including one board officer. The department shall keep separate and complete minutes and records of the respective administration meetings and rules and orders promulgated by each administration of the board, and each administration shall exercise its functions, powers, and duties exclusive of the other, except for the identity and membership provided in this act.

(2) The board under each administration may make rules necessary to enable the respective administrations to administer this act. The board under each administration shall prescribe curricula and standards for schools and courses preparing persons for registration and licensure under this act. It shall provide for surveys of schools and courses at times it considers necessary. It shall approve schools and courses that meet the requirements of this act and of the board. The department shall, subject to section 82A-1603, examine, issue to, and renew licenses of qualified applicants. The board shall conduct hearings on charges calling for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this act and may incur necessary expenses for this.

(3) The board under each administration may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms, and other appropriate forms and publications convenient for the proper administration of this act, and the board may fix reasonable fees for incidental services, all within the subject matter delegated to each administration by this act. Forms shall make clear reference to the administration for which the form is intended.

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(4) Unless the context requires otherwise, the powers and duties enumerated in this act shall be exercised and performed by the board—professional nursing administration, in all matters relating to professional nurses or professional nursing education, and shall be exercised and performed by the board inclusive of the practical nursing administration in all matters relating to practical nurses and practical nursing education. The officers of the board shall also be the officers of the board inclusive of the practical nursing administration."

Section 3. Section 66-1226, R.C.M. 1947, is amended to read as follows:

"**66-1226. Reimbursement for expenses — compensation.** Each member of the board shall be paid mileage as provided in section 59-801 and actual and necessary expenses, and in addition, *twenty-five dollars ($25)* per day for each day actually engaged in the discharge of duties under this act, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings, and a reasonable number of days for the preparation and administration of examinations."

Section 4. Section 66-1228, R.C.M. 1947, is amended to read as follows:

"**66-1228. License — by examination — by endorsement without examination — license fees.** (1) An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of twenty-five dollars ($25) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination, or if the examination is not taken, subject to deduction by the department of one dollar ($1) per subject of the examination which shall be retained by the department.

(2) The board—professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been licensed or registered as a professional nurse under the laws of another state *or* territory, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty-five dollars ($25) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars ($5), to be retained by the department.

(3) An applicant may, pending *licensure as* a professional *nurse* under subsection (2) of this section, practice professional nursing as an employee of a health *care* agency for a period not longer than three (3) months from the date the department acknowledges receiving from the nurse a completed statement, on a form provided by the department, of intention to

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practice. The statement shall consist of an affidavit by the nurse; and an affidavit by the employer where the nurse intends to practice professional nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information deemed by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or, in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of the applicant."

Section 5. Section 66-1232, R.C.M. 1947, is amended to read as follows:

"**66-1232. License of practical nurse by examination — by endorsement without examination.** (1) An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board, acting under the practical nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination the department shall issue to the applicant a license to practice as a licensed practical nurse.

(2) The board—practical nursing administration, may issue a license to practice as a licensed practical nurse without examination to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state *or* territory, if in the opinion of the practical nursing administration the applicant meets the requirements for practical nurses in this state.

(3) An applicant may, pending *licensure as* a practical *nurse* under subsection (2) of this section, practice practical nursing as an employee of a health *care* agency for a period of not longer than three (3) months from the date the department acknowledges receiving from the practical nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the practical nurse; and an affidavit by the employer where the practical nurse intends to practice practical nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information considered by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of application."

Section 6. Section 66-1239, R.C.M. 1947, is amended to read as follows:

"**66-1239. Survey and approval — secretary.** (1) A survey of the *school and* institution or institutions with which the school is to be affili-

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ated shall be made by the department, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that an approved school of nursing is not maintaining the standards required by law and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing.

(3) Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall *first be approved by the board and shall* be:

(a) A citizen of the United States;

(b) A graduate of an approved school of nursing;

(c) A holder of at least a *master's* degree *with post graduate courses in nursing.*

(d) A registered professional nurse with at least five (5) years' experience in teaching or administration in an approved school of nursing."

Approved March 27, 1975.

CHAPTER NO. 181

AN ACT TO CHANGE REFERENCES IN THE STATE COMPENSATION AND CLASSIFICATION STATUTES FROM THE DEPARTMENT OF ADMINISTRATION TO THE BUDGET DIRECTOR; AMENDING CERTAIN PROCEDURES; AMENDING SECTIONS 59-908, 59-909, 59-910, 59-911, AND 59-912, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-908, R.C.M. 1947, is amended to read as follows:

"**59-908. List of positions maintained— contents.** To facilitate state budgeting, and as directed by the *budget director*, each agency shall maintain a list of current authorized positions, the number of positions in each class and the salaries or wages being paid, appropriated or proposed for each class."

Section 2. Section 59-909, R.C.M. 1947, is amended to read as follows:

"**59-909. Determination of number and classes of employees in each agency.** *(1)* Based on documentation to be submitted by each agency,

the department shall determine the classes of positions of employees of each agency or program thereof before the beginning of each fiscal year. At any time, upon request of the agency, the department may amend the classes of positions of employees in any agency or program thereof.

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time equivalents) of each agency or program thereof prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program thereof.

(3) This section does not limit legislative authority to amend the determinations of the department *or the budget director.*"

Section 3. Section 59-910, R.C.M. 1947, is amended to read as follows:

"**59-910. Budget director authorization for increase of salary or wage of class.** An agency may not increase the salary or wage of any class of positions without authorization of the *budget director.*"

Section 4. Section 59-911, R.C.M. 1947, is amended to read as follows:

"**59-911. Budget director authorization for increase in number and class of positions of agency.** An agency may not increase the number and class of positions under its authority without the authorization of the *budget director.*"

Section 5. Section 59-912, R.C.M. 1947, is amended to read as follows:

"**59-912. No limitation on legislative authority.** This act does not limit the authority of the legislature relative to appropriations for salary and wages; and the *budget director* shall adjust its determinations in accordance with legislative appropriations."

Approved March 27, 1975.

CHAPTER NO. 182

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE MONTANA SAFETY ACT; METAL AND NONMETALLIC MINE SAFETY LAWS; BOILER LAWS; PAYMENT OF SILICOSIS BENEFITS, AND THE OCCUPATIONAL DISEASE ACT; AMENDING SECTIONS 41-1709, 41-1713 THROUGH 41-1729, 41-1733, 50-101, 50-102, 50-108, 50-118, 50-119, 69-1501, 69-1503, 69-1507, 69-1509, 69-1510, 69-1512, 69-1513, 69-1514, 69-1515, 69-1517, 69-1601, 69-1602, 69-1604, 71-1001, 71-1002, 71-1005, 71-1006, 71-1007, 92-1302, AND 92-1303, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1709, R.C.M. 1947, is amended to read as follows:

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"**41-1709. Definitions.** Unless context requires otherwise, in this act:

(1) *"Division" means the division of workers' compensation of the department of labor and industry provided for in section 82A-1004.*

(2) "Employer" is defined as in section *92-410.1*, R.C.M. 1947.

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the *division* under the provisions of this act.

(4) "Employee" and "*worker*" are defined as in section 92-411, R.C.M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 2. Section 41-1713, R.C.M. 1947, is amended to read as follows:

"**41-1713. Division's powers — rule-making power — subpoena and other powers.** In the administration of this act the *division*:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall carry out the provisions of this act. The safety *bureau chief* shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May *adopt* and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the *division* shall provide for defraying the expenses thereof."

Section 3. Section 41-1714, R.C.M. 1947, is amended to read as follows:

"**41-1714. Compelling witnesses to appear in response to subpoena — contempt.** (1) The *division* or any member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may

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in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the *division.*

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why *the witness* has not attended and testified or produced the papers before the *division* or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the *division* or member thereof, the court thereupon shall enter an order that the witness appear before the *division* or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court."

Section 4. Section 41-1715, R.C.M. 1947, is amended to read as follows:

"**41-1715. Division's power to prescribe safety devices and fix and order safety standards.** The *division* may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand."

Section 5. Section 41-1716, R.C.M. 1947, is amended to read as follows:

"**41-1716. Notice of hearing on rules and codes.** Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the *division* shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such

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other papers of general circulation in this state as the *division* may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the *division* after the hearing."

Section 6. Section 41-1717, R.C.M. 1947, is amended to read as follows:

"**41-1717. Order directing additions, repairs, and improvements.** Whenever the *division*, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the *division* shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The *division* may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order."

Section 7. Section 41-1718, R.C.M. 1947, is amended to read as follows:

"**41-1718. Notice of violation of safety code, order or rule — penalties for violations — hearings — injunction authorized.** (1) The *division* upon finding any violation of any duly *adopted* safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the *division*, or who fails or refuses to file a report of accident as required by section 92-808, R.C.M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars ($1,000). This civil penalty may be imposed and col-

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lected by the *division* in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs *workers*. Any penalty collected under this subsection shall be paid into the industrial accident administrative earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the *division* within twenty (20) days after entry of such order. The *division* shall then affirm, modify or revoke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

(5) In addition to all other remedies provided in this act, the *division* may bring an action to enjoin any violation of any duly *adopted* safety order, code or rule."

Section 8. Section 41-1719, R.C.M. 1947, is amended to read as follows:

"**41-1719. Time allowed for compliance with order.** The *division* shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the *division* for an extension of time, which the *division* shall grant if it finds the extension of time necessary."

Section 9. Section 41-1720, R.C.M. 1947, is amended to read as follows:

"**41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety.** The *division* may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the *workers* employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the *workers* employed therein. Upon issuance of any such order, the *division* shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the *division*. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the *division* shall affirm, modify, or set aside the order. Nothing in this section shall empower the *division* to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the *division* that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the *workers* there employed, the *division* may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the *division*."

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Section 10. Section 41-1721, R.C.M. 1947, is amended to read as follows:

"**41-1721. Judicial review of division's orders, rules or decisions.** (1) The orders of the *division*, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the *division* and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the *division*. Within ten (10) days after the receipt of the notice, the *division* shall file with the clerk of court the record of proceedings before the *division*, including a transcript of all the evidence adduced upon the hearing and any rehearing before the *division*. The district court, on application for good cause shown, may extend the time within which the *division* shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the *division*.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The *division* acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases."

Section 11. Section 41-1722, R.C.M. 1947, is amended to read as follows:

"**41-1722. Application for rehearing of order, decision, or rule of division.** Any party aggrieved directly or indirectly by any final order, decision or rule of the *division* made or entered pursuant to this act may apply to the *division* within twenty (20) days after the order of the *division*

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for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act."

Section 12. Section 41-1723, R.C.M. 1947, is amended to read as follows:

"**41-1723. Application for rehearing — contents — waiver — copies to adverse parties — procedure where no adverse parties.** (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the *division.*

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the *division* may require the application for rehearing to be served on such parties as may be designated by the *division.*"

Section 13. Section 41-1724, R.C.M. 1947, is amended to read as follows:

"**41-1724. Resolution of issues on rehearing — notice — disposition.** (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the *division*, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the *division* shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the *division* may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the *division* shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the *division* shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the *division.*

(5) An application for rehearing is considered denied by the *division* unless it has been acted upon within thirty (30) days from the date of filing; provided that the *division* may, upon good cause being shown there-

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for, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days."

Section 14. Section 41-1725, R.C.M. 1947, is amended to read as follows:

"**41-1725. Periodic inspections of hazardous places of employment — report.** (1) The *division* shall inspect from time to time all the places of employment defined in the Montana *Workers'* Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the *division* and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the *division*, or by the *division* in the course of a hearing or in the course of a hearing or proceeding."

Section 15. Section 41-1726, R.C.M. 1947, is amended to read as follows:

"**41-1726. Workers to notify employers of safety violations — complaint to division — investigation.** (1) A *worker* shall notify *the worker's* employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the *worker*.

(2) If the employer fails to remedy the violation, the *worker* may complain in writing to the *division* of the violation.

(3) Upon receiving the complaint the *division* shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant."

Section 16. Section 41-1727, R.C.M. 1947, is amended to read as follows:

"**41-1727. Code-making power.** (1) *The division may adopt*, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the *division* may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the *division* shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

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(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the *division* may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the *division* under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time."

Section 17. Section 41-1728, R.C.M. 1947, is amended to read as follows:

"**41-1728. Variations.** Any employer may consult with the *division* for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the *division* may grant variations from particular provisions of the code and permit the use of other or different devices or methods. *However,* such variations shall be granted only when it is clear that the reasonable safety of the workers in *the* plant or place of employment is not thereby endangered. In any case where the *division* shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the *division* and be open to public inspection."

Section 18. Section 41-1729, R.C.M. 1947, is amended to read as follows:

"**41-1729. General research and review powers of division — power to appoint advisers.** The *division* may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the *division* if necessary, and who shall assist the *division* in establishing standards of safety. The *division* may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers."

Section 19. Section 41-1733, R.C.M. 1947, is amended to read as follows:

"**41-1733. Occupational health hazards.** The *division* shall report occupational health hazards discovered in its investigations and inspection of places of employment to the *department of health and environmental sciences* and shall co-operate with the *department of health and environmental sciences* in carrying out its duties as specified in Title 69, chapter 42, R.C.M. 1947."

Section 20. Section 50-101, R.C.M. 1947, is amended to read as follows:

"**50-101. Inspectors of metal and nonmetallic mines — employ-**

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ment. The *division of workers' compensation* shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this act and shall prescribe their powers, duties and responsibilities."

Section 21. Section 50-102, R.C.M. 1947, is amended to read as follows:

"50-102. Inspections and investigations — access to mine — order to close mine or abate violation — notice — hearing and review. (a) The *division* is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this act.

(b) For the purpose of making any inspection or investigation authorized by this act, authorized representatives of the *division* shall have the right of entry to, upon, or through any mine which is subject to this act.

(c) If, upon any inspection of a mine which is subject to this act authorized representatives of the *division* find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the persons designated below, whose presence in such area is necessary to eliminate the danger described in such order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary in the judgment of the operator of the mine, to eliminate the danger described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a

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reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation; thereupon, the *division* shall make an order requiring the operator of such mine to cause all persons in such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(f) Each finding made and notice or order issued under this section shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued by an authorized representative pursuant to this section may be annulled, canceled, or revised by the authorized representative, and in case of a *division* order, the *division* may annul, cancel or revise the order.

(g) The order of the duly authorized representative of the *division* shall remain in effect, but shall immediately be subject to review as provided in this act.

(h) An operator notified of an order made pursuant to section 50-102 (c) may apply to the *division* for a hearing, revision, or annulment of such order. Whenever the *division* after such a hearing upon complaint, or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but, if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings, revising or annulling the order under review.

(i) An operator notified of an order made pursuant to section 50-102

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(d) may apply to the *division* for a hearing or revision of such order. If the *division* finds that there was no violation, it shall make an order annulling the order under review. If the *division* finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the *division* finds that such violation was not totally abated, it shall make an order consistent with its findings.

(j) In view of the urgent need for prompt decisions of matters submitted to the *division* under section 50-102, all actions which the *division* or its authorized representatives are required to take under this section shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved."

Section 22. Section 50-108, R.C.M. 1947, is amended to read as follows:

"**50-108. To what mines act is applicable.** This act shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the *division*, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of *persons* employed."

Section 23. Section 50-118, R.C.M. 1947, is amended to read as follows:

"**50-118. Violation of the act — penalties.** (a) Whenever an operator (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the *division* or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the *division* to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the *division* any information or report requested by the *division* and which may reasonably be necessary to carry out the provisions of this act, a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the *division* in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(b) Any person who knowingly (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the *division* or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the *division* to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or of an accident, injury, or occupational

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disease occurring in or connected with such a mine, or (5) refuses to furnish the *division* any information or report requested by the *division* and which may reasonably be necessary to carry out the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished for each such offense by a fine of not less than one hundred dollars ($100), or more than three thousand dollars ($3,000), or by imprisonment in the county jail not exceeding six (6) months, or both. In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both."

Section 24. Section 50-119, R.C.M. 1947, is amended to read as follows:

"**50-119. Definitions.** "Authorized representative" means mine inspector or any other person employed or authorized by the *division* to perform any and all duties under this act. *"Division"* means the *division of workers' compensation* of the state of Montana. "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession. "Employee" means every person in this state, including a contractor other than an "independent contractor," who is in the service of an employer as hereinafter defined in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise. "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written. "Inspector" means a person or persons employed by the *division* to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this act. "Mine" means any mine (or excavation) when clay, metallic ore, mineral, gypsum, or rock is dug or mined whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground. "Notice" means a written notice, work order or correction notice issued by an authorized representative of the *division*, which notice specifies a violation(s) and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation(s). "Occupational Health" means any of those health conditions that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the *division*, or any other determination or decision made by the *division*."

Section 25. Section 69-1501, R.C.M. 1947, is amended to read as follows:

"**69-1501. Boiler rules and regulations — state inspectors of boilers, appointment, term and compensation — special boiler inspectors.** *(1) The division of workers' compensation* shall formulate definitions, rules and regulations for the safe construction, installation, operation,

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inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The *division* shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

(3) In addition to the state boiler inspectors the *division* shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors."

Section 26. Section 69-1503, R.C.M. 1947, is amended to read as follows:

"**69-1503. Inspection of boilers — boiler installations.** (1) The inspector of boilers must inspect all boilers and steam generators before the same are used, and all persons who bring into this state, for operation in this state, any boiler or boilers must notify the *division* stating the number and kind of boilers, and where they are to be located and operated in this state, and must secure from the *division* a certificate of inspection before boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Upon written application, longer inspection intervals may be authorized by the *division.* Any owner, operator or user who opens a boiler or boilers between inspections for repair or other reasons must notify the *division* of such action and such boiler or boilers shall at the discretion of the *division* be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation. Any person failing to give notice to the *division* as herein provided, or who operates such boilers without a certificate from the *division,* shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) When necessary, the boiler inspector shall subject boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure shall not exceed one hundred fifty per cent (150%) of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper

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dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3) New boiler installations. No boiler which does not conform to the rules *adopted* by the *division* governing new construction and installation shall be installed and operated in this state after twelve (12) months from the date upon which the first rules under this act pertaining to new construction and installation shall have become effective, unless the boiler is of special design or construction, and is not covered by the rules, nor is in any way inconsistent with such rules, in which case a special installation and operating permit may at its discretion be granted by the *division*."

Section 27. Section 69-1507, R.C.M. 1947, is amended to read as follows:

"**69-1507. Duty of owner to permit inspection — division action — costs and expenses.** It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same. In case the owner, operators, or manager of any boiler is notified by the inspector to have *the* boiler ready for inspection on a certain day, and fails to have such boiler ready for inspection at such time, the inspector shall notify the *division* to gain access to *the* boiler. Any person failing to immediately comply with *division* directed access to *the* boiler shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. The owner, engineer or manager of any boiler who has refused access resulting in a *division* order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended."

Section 28. Section 69-1509, R.C.M. 1947, is amended to read as follows:

"**69-1509. Classification and licensing of engineers.** (1) Engineers entrusted with the operation, care and management of steam or water boilers and steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery shall be divided into four classifications in accordance with the following:

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(a) First-class engineers shall be licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers shall be licensed to operate steam boilers operating not in excess of two hundred fifty (250) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of three hundred seventy-five (375) pounds per square inch guage pressure and four hundred fifty degrees Fahrenheit (450°F) temperature, and steam driven machinery not to exceed one hundred (100) horsepower per unit with the exception of traction and hoisting engines.

(c) Third-class engineers shall be licensed to operate steam boilers operating not in excess of one hundred (100) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of one hundred sixty (160) pounds per square inch gauge pressure and three hundred fifty degrees Fahrenheit (350°F) temperature.

(d) Low-pressure engineers shall be licensed to operate steam boilers operating not in excess of fifteen (15) pounds per square inch gauge pressure or water boilers operating not in excess of fifty (50) pounds per square inch gauge pressure and two hundred fifty degrees Fahrenheit (250°F) temperature.

(3) Each applicant for an engineer's license shall meet the following minimum requirements for the class of engineer's license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of engineer's license for which application is being made.

(a) Applicants for low-pressure engineer's license shall have no less than three (3) months' full-time experience in the actual operation of a boiler in this classification and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a low-pressure engineer's license.

(b) Applicants for third-class engineer's license shall have no less than six (6) months' full-time experience in the actual operation of a boiler in this classification, under an engineer holding a valid third-class or higher license, and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a third-class engineer's license.

(c) Applicants for second-class engineer's license shall have:

(1) No less than two (2) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license; or

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(2) Hold a valid third-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license.

(d) Applicants for first-class engineer's license shall have:

(1) No less than three (3) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification, shall be granted a first-class engineer's license; or

(2) Hold a valid second-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license; or

(3) Hold a valid third-class engineer's license and have no less than two (2) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license.

(e) Allowable exceptions or variances to the foregoing minimum requirements are as follows:

(1) Applicants for engineer's license in any classification holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the *division* and is found to be competent to operate a boiler or boilers and steam driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification satisfactory to the *division*, accumulated in United States military services or the merchant marine service may be accepted in lieu of the operating experience required for licensing of engineers in each of the foregoing classifications.

(3) Applicants with training in the actual operation of steam or water boilers and steam machinery who have been certified as having satisfac-

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torily completed a prescribed training course from a recognized vocational-technical training school or center or other *division* approved institution or training program in the classification for which he is applying may at the discretion of the *division* be credited with a maximum of six (6) months' experience toward first, second, or third-class engineer's license.

(4) None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are entrusted with the care and management of traction engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. Applicants for a traction engineer's license shall have no less than six (6) months' full-time experience in the operation of steam traction engines and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate a traction engine shall be granted a traction engineer's license. The *division* at its discretion may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment."

Section 29. Section 69-1510, R.C.M. 1947, is amended to read as follows:

"**69-1510. Complaints and revocation of license.** Whenever complaint is made against an engineer holding a license that he through negligence, want of skill, or inattention to duty, permitted his boiler(s) to burn or otherwise become in bad condition, or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the *division* to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of *the* engineer."

Section 30. Section 69-1512, R.C.M. 1947, is amended to read as follows:

"**69-1512. Fees for inspection or examination.** (1) All fees for inspection are to be paid to the *division* in accordance with the following schedule based on safety valve setting:

(a) Boilers with pressure under thirty (30) pounds per square inch $10

(b) Boilers with pressure from thirty (30) pounds to one hundred (100) pounds per square inch $15

(c) Boilers with pressure from one hundred (100) pounds to three hundred (300) pounds per square inch $20

(d) Boilers with pressure over three hundred (300) pounds per square inch $30

(e) Miniature boilers with pressure not in excess of one hundred (100) pounds per square inch $10

(f) Steam traction $ 5

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(g) Operating certificate	$ 4

In case of the failure of the owner, manager or person in charge of any boiler to pay such fee to the *division*, the *division* shall initiate the necessary legal action to collect *the* fee. Failure of any person to immediately abide with results of such *division* action shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2) Whenever, upon request of the owner or operator of any boiler it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law, in addition to the fees herein prescribed, shall be charged and collected by the *division.*

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a) First class	$30
(b) Second class	$20
(c) Third class	$12
(d) Low pressure	$ 8
(e) Traction	$12
(f) Renewal of license	$ 4
(g) Replacement of lost certificate	$ 2

(4) Each application shall be accompanied by a payment equal to fifty per cent (50%) of the license fee for which application is being made; said payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

In case of the failure of any applicant to successfully pass an examination, forty-five (45) days must elapse before he can again be examined for license."

Section 31. Section 69-1513, R.C.M. 1947, is amended to read as follows:

"**69-1513. Review of license rejection.** If any person who has applied for a license under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within forty-five (45) days after the date of his rejection, in writing set forth the causes of his grievance and request a *division* review. Such request must be addressed to the *division* and shall be signed by the rejected applicant. Within two days after receiving such request, *the division shall* notify the applicant in writing that on a certain day, which shall not be less than five nor more than thirty (30) days after the date the *division* receives *the* written request, the *division* shall review and evaluate the application. The applicant may appear in person at *the* review if he so desires. At least two days before the day set for the review the applicant may designate in writing to the *division* the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such

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engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review."

Section 32. Section 69-1514, R.C.M. 1947, is amended to read as follows:

"**69-1514. Division decision.** After *the* review is completed, if the *division* decides that *the* applicant is entitled to the license he has applied for, the *division* shall without delay issue a license accordingly, but if the *division* rejects the applicant, it is a final rejection, and he must not be granted another examination for the space of forty-five (45) days after such last rejection, when he may again apply as provided by section 69-1512."

Section 33. Section 69-1515, R.C.M. 1947, is amended to read as follows:

"**69-1515. Boilers exempted from provisions — duty of owner of traction engine — notice of purchase of boiler.** (1) This act shall not apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers operated at not over fifteen (15) pounds per square inch gauge pressure in private residences or apartments of six (6) or less families or to hot water heating or supply boilers operated at not over fifty (50) pounds per square inch gauge pressure and temperatures not over two hundred fifty degrees Fahrenheit (250°F) when in private residences or apartments of six (6) or less families. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. No persons operating any of the engines or boilers hereinbefore exempted from the operation of this article shall be required to procure license from the *division.*

(2) Any person purchasing any boiler whether traction or stationary shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the *division* and shall notify the *division* as to where *the* boiler will be installed and operated. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other boilers and steam engines, except as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license."

Section 34. Section 69-1517, R.C.M. 1947, is amended to read as follows:

"**69-1517. Operation of boiler or steam engine without license.** It is unlawful for any person in this state to operate a stationary boiler or

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steam engine, or any boiler or steam engine other than engines and boilers exempted by the provisions of section 69-1515, without a license granted under the provisions of this article. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may, for fifteen days employ any person of the age of eighteen years or over whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the *division*. The person so employing the unlicensed engineer shall immediately notify the *division*. But no owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act."

Section 35. Section 69-1601, R.C.M. 1947, is amended to read as follows:

"**69-1601. Operators of hoisting engines must procure licenses.** (1) It shall be unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel in industrial operations or on construction projects, or any air compressor operated by any power without first obtaining a license therefor from the *division* as herein provided. Except that in emergencies the provisions of section 69-1517 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects."

Section 36. Section 69-1602, R.C.M. 1947, is amended to read as follows:

"**69-1602. Application and fee for license — renewal and revocation of license.** Application for such licenses shall be made to the *division* in the same manner, and the same fee shall be charged therefor as now required by law for obtaining a license to operate steam engines and boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines or boilers; provided, that the *division* shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which the *division* could revoke a license to operate steam engines and boilers."

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Section 37. Section 69-1604, R.C.M. 1947, is amended to read as follows:

"**69-1604. First and second-class licenses — qualifications of applicant.** (1) Each applicant for a hoisting engineer's license shall meet the following minimum requirements for the class of license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of license for which application is being made.

(a) Applicants for second-class hoisting engineer's license shall have no less than two years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid second-class or first-class license and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a second-class hoisting engineer's license.

(b) Applicants for first-class hoisting engineer's license shall:

(1) Have no less than three years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license; or

(2) Hold a valid second-class license and have no less than six (6) months' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the *division* and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license.

(c) Applicants for first or second-class hoisting engineer's license holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the *division* and is found to be competent to operate hoisting machinery in that classification shall be granted a license in that classification.

(d) Applicants for first or second-class hoisting engineer's license holding a valid first or second-class engineer's license for the operation of boilers, steam machinery and hoisting engines for the state of Montana prior to enactment of this act shall, upon application during a period not to exceed twelve (12) months after enactment of this act, be granted a hoisting engineer's license in that classification."

Section 38. Section 71-1001, R.C.M. 1947, is amended to read as follows:

"**71-1001. Definitions.** (a) "Payments" means money payments to persons having silicosis as herein defined.

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(b) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(c) "Examining board" shall mean well-qualified physician or physicians, as designated by the *division of workers' compensation.*"

Section 39. Section 71-1002, R.C.M. 1947, is amended to read as follows:

"**71-1002. Administration.** *The division of workers' compensation shall administer this chapter. The division shall:*

(1) Formulate a plan and *adopt rules* for the operation of this chapter.

(2) Cooperate with the federal government in all matters of immediate concern pertaining to silicosis.

(3) Publish an annual report and interim reports as may be necessary or required or asked for by the governor.

(4) Designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant.

(5) Designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter.

(6) Pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the *division* for that purpose.

(7) Develop and co-operate with other agencies in developing measures for the prevention of silicosis."

Section 40. Section 71-1005, R.C.M. 1947, is amended to read as follows:

"**71-1005. Application for payment.** Application for payment under this chapter shall be made by the person seeking such payment to the *division.* The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the *division.* The application form may be filled in and written by a person authorized by the *division.* If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used."

Section 41. Section 71-1006, R.C.M. 1947, is amended to read as follows:

"**71-1006. Investigation of applications.** Whenever the *division* under this chapter receives an application for a payment an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provision of this chapter, and such other information as may be required by the rules of the *division.* The investigation of such applicant shall be conducted by representatives of the *division.* The physicians or physician designated by the *division* as herein provided shall constitute an examining board for such clinical,

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pathological, X-ray and Roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report."

Section 42. Section 71-1007, R.C.M. 1947, is amended to read as follows:

"**71-1007. Making payments.** Upon the completion of such investigation the *division* shall determine whether or not the applicant is entitled to a payment under this chapter. The *division* shall then notify the applicant of its decision."

Section 43. Section 92-1302, R.C.M. 1947, is amended to read as follows:

"**92-1302. Administration of act.** This act shall be administered by the *division of workers' compensation.*

Section 44. Section 92-1303, R.C.M. 1947, is amended to read as follows:

"**92-1303. Definitions.** Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the *Workers'* Compensation Act shall apply to terms and words herein contained.

(1) "Weekly wage" means the average of the weekly earnings of the employee in the employ of his employer against whom compensation is awarded during the period of one year prior to the termination of his employment with such employer, or during such lesser period in such year as *the employee* has been in the employ of his employer. In case the employee is absent from employment during the period as a result of the occupational disease for which compensation is claimed, then the week or weeks in which the absence occurs shall not be included in the computation of the average weekly wage. If the period provided in this section for computation of the average weekly wage does not include four weeks, then the average weekly wage shall be such as, having regard to the previous wage of the employee, or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the weekly earning capacity of the disabled employee in the employment in which he is working at the time of his disablement.

(2) "Award" means the finding or decision of the *division* as to the amount of compensation due any disabled employee or the dependents of any deceased employee.

(3) "Division" or board means the division of workers' compensation provided for in section 82A-1004.

(4) "Compensation" means the payments and benefits provided in this act.

(5) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from per-

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forming any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." Provided that in the event of death or disability due to pneumoconiosis the following shall apply:

(a) If a miner who is suffering or has suffered from pneumoconiosis was employed for ten (10) years or more in one (1) or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.

(b) If a deceased miner was employed for ten (10) years or more in one (1) or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis.

(c) If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one (1) or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (3) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in the manner prescribed in clause (1) or (2) then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

(6) The terms "employee," "workman," and "operative," as used herein, shall mean:

Every person in the service of the state, and of a county, city, town, municipal corporation, or school district, including the regular members of lawfully constituted police and fire departments of cities and towns.

Every person in the service of any employer subject to this act as hereinafter defined or to whom such employer is required to secure compensation under this act, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of trade, business, or occupation of the employer, and not including agricultural workers and domestic servants unless the employer shall so elect.

(7) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years, or if no surviving wife or husband then a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of disablement.

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(8) "Major dependent" means if there be no beneficiary as defined in a preceding section, the father or mother, or the survivor of them, if actually dependent upon the decedent at the time of his disablement, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

(9) "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding section the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of *the decedent's* disablement. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the disablement, an illegitimate child legitimized prior to the disablement.

(12) "Week" means six (6) working days, but includes Sundays.

(13) "Wages" means the average daily wages received by the employee at the time of the disablement for the usual hours of employment in a day, and overtime is not to be considered.

(14) "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the deceased at the time of the disablement.

(15) "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her disablement.

(16) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the *division*, or any other determination arrived at or decision made by such *division*, excepting general or local orders as herein specified.

(17) "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve (12) times the average monthly payroll for the current year; provided, that an estimate may be made by the *division* for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the *division*, as the case may actually be on December 31st of such current year.

(18) "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth (30th) day of the succeeding June.

(19) "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

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(20) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(21) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice in this state.

(22) For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic X-ray pattern, and by variable clinical manifestations.

(23) For the purpose of this act "pneumoconiosis" is defined as a chronic dust disease of the lung arising out of employment in coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(24) "Workshift" means the work for which an employee is paid a day's wages."

Approved March 27, 1975.

CHAPTER NO. 183

AN ACT DESIGNATING THE CITY OF FORT BENTON AS THE PLACE FOR THE ERECTION OF A MEMORIAL COMMEMORATING THE EXPLORATION OF THE LEWIS AND CLARK EXPEDITION AND PROVIDING FOR A COMMISSION TO SELECT A SITE AND A SUITABLE MEMORIAL FOR THE LEWIS AND CLARK EXPEDITION.

Be it enacted by the Legislature of the State of Montana:

Section 1. The city of Fort Benton is designated as the site for the erection of a memorial commemorating the exploration of the Lewis and Clark expedition.

Section 2. The governor is authorized to appoint a temporary commission of seven (7) persons who shall:

(1) select a suitable site in Fort Benton for the erection of a memorial commemorating the Lewis and Clark expedition;

(2) select a suitable memorial to be placed upon the site chosen; and

(3) supervise the erection of the memorial and make all necessary decisions relating thereto.

Section 3. This act is repealed on August 1, 1976 or upon completion of the memorial project, whichever first occurs.

Approved March 27, 1975.

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CHAPTER NO. 184

AN ACT TO REPEAL SECTIONS 10-301 THROUGH 10-310, R.C.M. 1947, PERTAINING TO APPRENTICING OF MINORS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sections 10-301 through 10-310, R.C.M. 1947, pertaining to apprenticing of minors are repealed.

Approved March 31, 1975.

CHAPTER NO. 185

AN ACT TO AMEND SECTION 69-3911, R.C.M. 1947, BY PROVIDING METHODS FOR OBTAINING PERMITS FROM THE STATE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE CONSTRUCTION, INSTALLATION, ALTERATION, OR USE OF EQUIPMENT OR FACILITIES WHICH DIRECTLY OR INDIRECTLY CONTRIBUTES TO AIR POLLUTION OR WHICH CONTRIBUTES TO THE ABATEMENT OF AIR POLLUTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3911, R.C.M. 1947, is amended to read as follows:

"**69-3911. Permits.** (1) The board may, by rule or regulations, prohibit the *construction,* installation, alteration, or use of any machine, equipment, device or *facility* which it finds may *directly or indirectly* cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained from it.

(2) Not later than one hundred eighty (180) days prior to the time that construction begins and not later than one hundred twenty (120) days prior to the time that installation, alteration or use commences, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) Notwithstanding anything contained in subsection (2), the department may, for good cause shown, waive the provisions of subsection (2) or shorten the time required for filing the appropriate applications.

(4) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it deems necessary.

(5) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing within thirty (30) days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(6) The department shall provide for the issuance, suspension, revocation, and renewal of any permits issued under this section.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant, within one hundred eighty (180) days of the receipt of a filed application as defined in subsection (5), in writing, of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant within sixty (60) days of the receipt of a filed application, as defined in subsection (5), in writing, of the approval or denial of the application.

(8) When the department approves or denies the application for a permit under this section, any person or persons who is jointly or severally adversely affected by the department's decision may request, within fifteen (15) days after the department renders its decision, upon affidavit, setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act. The department's decision on the application is not final unless fifteen (15) days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Approved March 31, 1975.

CHAPTER NO. 186

AN ACT PROVIDING FOR FILING FEES TO ACCOMPANY REQUESTS FOR VARIANCES; AMENDING SECTION 69-3916, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3916, R.C.M. 1947, is amended to read as follows:

"**69-3916. Variances — filing fees.** (1) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration or extent of emissions of air pollutants. The application shall be accompanied by such informa-

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tion and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) Compliance with the rules or regulations from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 14 [69-3917] of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 12 [69-3915] of this act to any person or his property.

(6) Any person who owns or is in control of any plant, building, structure, process or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from any rule governing the quality, nature, duration or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than five hundred dollars ($500) or two percent (2%) of the cost of the equipment to bring the facility into compliance with the rule(s) for which a variance is sought, whichever is greater, but not to exceed eighty thousand dollars ($80,000). The department shall prepare a statement of actual costs, and any funds in excess of this shall be returned to the applicant. The value of any fee in excess of five hundred dollars ($500) shall be calculated by determining the cost of the equipment required to bring the facility into compliance with the rule(s) for which the variance is being sought. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of

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cost and verifying materials, to permit the department to determine, with reasonable accuracy, the sum of the fee which accompanied the request for variance. For a renewal of an exemption or partial exemption, if no public hearing is necessary, or no environmental impact statement is deemed necessary, or if no appreciable investigation of the renewal application is necessary by the department, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the earmarked revenue fund provided for in section 79-410. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department (a) to compile the information required for rendering a decision on the request, (b) to compile the information necessary for any environmental impact statements, (c) to offset the costs of a public hearing, printing, or mailing and (d) to carry out its other responsibilities under this chapter."

Approved March 31, 1975.

CHAPTER NO. 187

AN ACT PROVIDING FOR THE PAYMENT OF A WORKMEN'S COMPENSATION CLAIMANT'S ATTORNEY AND WITNESS FEES IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 92-618 that reads as follows:

92-618. Payment by employer or insurer of fees for claimant's legal services and witnesses. (1) If an employer or insurer pays or tenders payment of compensation under Title 92, but controversy relates to the amount of compensation due, and the settlement or award is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the division or the workmen's compensation judge if the case has gone to a hearing, based solely upon the difference between the amount settled for or awarded and the amount tendered or paid, may be awarded in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the division or the workmen's compensation judge.

Approved March 31, 1975.

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CHAPTER NO. 188

AN ACT AMENDING SECTIONS 11-3283, 16-3705, 23-4724, 26-109, AND 31-105, R.C.M. 1947, TO ALLOW PUBLIC OFFICERS AND EMPLOYEES TO PARTICIPATE IN ELECTION CAMPAIGNS, AND TO PROTECT THEM FROM UNDUE EMPLOYER INFLUENCE; REPEALING SECTION 23-4739, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3283, R.C.M. 1947, is amended to read as follows:

"**11-3283. Persons in classified service not affected by political or religious opinions or race.** No person in the classified service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against because of political opinions or affiliations, or because of race, color, or religious beliefs."

Section 2. Section 16-3705, R.C.M. 1947, is amended to read as follows:

"**16-3705. Qualifications of deputy sheriffs, marshals and policemen.** (1) No sheriff of a county, mayor of a city, or other persons authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this state for a period of one year at least, and in the county where such appointment is made for the period of at least six (6) months prior to the date of said appointment, and who does not meet the minimum qualifying standards for employment promulgated by the board of crime control; provided, that the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. And provided further, that the person or body authorized by law to appoint special deputies, marshals, or policemen may, in its discretion, waive residency requirements.

(2) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) graduate of an accredited high school or the equivalent thereof;

(b) good moral character;

(c) never been convicted of a felony;

(d) has not within five (5) years immediately preceding his date of employment been affiliated in any manner with a subversive organization;

(e) been examined by a physician licensed to practice in the state of Montana within thirty (30) days immediately preceding his date of employment and has been pronounced in good physical condition.

Subsection (2) of this section shall not be applicable to any deputy

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sheriff whose term of employment commenced prior to the effective date of this act.

(3) Any person whose term of employment as a deputy sheriff commences subsequent to the effective date of this act shall serve a one-year probationary period and that during this one-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of this act.

(4) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to the effective date of this act to attend that academy provided for by chapter 52, Title 75, R.C.M. 1947, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending. Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

(5) Any deputy sheriff now employed or that may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(a) conviction of a felony subsequent to the commencement of such employment;

(b) willful disobedience of an order or orders given by the sheriff;

(c) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(d) sleeping while on duty;

(e) incapacity materially affecting ability to perform official duties;

(f) gross inefficiency in the performance of official duties.

(6) When a sheriff terminates the employment of a deputy he shall at the time of termination cause to be served upon said deputy a statement in writing subscribed and sworn to by the sheriff setting forth the cause or causes for the discharge or termination of the deputy's employment.

(7) Any deputy sheriff whose employment is terminated from and after the effective date of this act, may within thirty (30) days from the date of the termination of his employment make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge. In the event that a deputy prevails at the hearing he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination."

Section 3. Section 23-4724, R.C.M. 1947, is amended to read as follows:

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"**23-4724. Unlawful acts of employers and employees.** *(1)* It shall be unlawful for any employer, in paying his employees the salary or wages due them, to enclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of such employees. Nor shall it be lawful for an employer, to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill or placard containing any threat or promise, notice, or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or wages of his workmen or employees be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This section shall apply to corporations, individuals, and *public officers and employees.*

(2) No person may attempt to coerce, command, or require a public employee to influence or give money, service or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(3) No public employee may solicit any money, influence, service or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, for each separate offense."

Section 4. Section 26-109, R.C.M. 1947, is amended to read as follows:

"**26-109. Political activity prohibited.** While retaining the right to vote as he may please, and to express his opinions on all political questions, no employee of the fish and game commission *may* use his official authority or influence for the purpose of interfering with an election, or affecting the results, thereof, or for the purpose of coercing or influencing the political actions of any person or body."

Section 5. Section 31-105, R.C.M. 1947, is amended to read as follows:

"**31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal.** (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

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(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

(i) Sound and active physical and mental condition.

(ii) Good moral character.

(iii) Resident of Montana for at least one (1) year immediately prior to appointment.

(iv) Pass a satisfactory test in the operation of automobiles.

(v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

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(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the

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chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension—demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the

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payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court."

Section 6. Section 23-4739, R.C.M. 1947, is repealed.

Approved March 31, 1975.

CHAPTER NO. 189

AN ACT AMENDING SECTION 92-706.1, R.C.M. 1947, OF THE WORKMEN'S COMPENSATION ACT, BY REMOVING REFERENCES TO TIME LIMITATIONS ON MEDICAL BENEFITS SO THAT THE MONTANA MEDICAL BENEFIT PROVISION UNDER THE WORKMEN'S COMPENSATION ACT COMPLIES FULLY WITH THE REPORT OF THE NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-706.1, R.C.M. 1947, is amended to read as follows:

"**92-706.1. Medical and hospital services approved by the division are furnished.** *(1)* In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the employer or insurer shall furnish, *without limitation as to length of time or dollar amount,* reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(2) All hospitals must submit to the division of workmen's compen-

sation, a schedule of fees and charges for treatment of injured workmen to be in effect for at least a twelve (12) month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least thirty (30) days prior to its effective date and shall not exceed the charges prevailing in the hospital for similar treatment of private patients."

Approved March 31, 1975.

CHAPTER NO. 190

AN ACT TO AMEND SECTION 94-2-101 OF THE CRIMINAL CODE, IN THE DEFINITION OF INTOXICATING SUBSTANCE BY CHANGING THE REFERENCES TO NONALCOHOLIC SUBSTANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"**94-2-101. General definitions.** Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

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(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

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(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it." The singular term shall include the plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any *controlled* substance *as defined in chapter 3 of Title 54, R.C.M. 1947, and alcoholic beverage* including but not limited to any beverage containing one-half of one per centum (½ of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (½ of 1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep; or

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

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(29) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"—A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

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(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judical, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, micro-organisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record secret scientific, technical, merchan-

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dising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, advisor, consultant, administrator, executor, guardian or court-appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"—A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by any body member of another person or penetration of the vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

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(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

(e) expose any person to hatred, contempt or ridicule; or

(f) harm the credit or business repute of any person; or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars ($150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars ($150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

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(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

(68) "Without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old."

Approved March 31, 1975.

CHAPTER NO. 191

AN ACT TO AMEND THE UNIFORM PROBATE CODE TO PROVIDE THAT A PERSONAL REPRESENTATIVE AND HIS ATTORNEY MAY NOT RECEIVE A FEE OR OTHER COMPENSATION FOR AN ESTATE NOT CLOSED WITHIN TWO YEARS UNLESS GOOD CAUSE IS SHOWN TO EXIST.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 91A-3-1011 that reads as follows:

91A-3-1011. Estate to be closed within two years. If an estate has not been closed within two (2) years from the date of appointment of the personal representative, the clerk of the district court shall notify the district judge thereof. The judge shall order the personal representative and his attorney to appear before the court and show cause why the estate has not been closed.

If, after the show cause hearing, the judge determines that good cause does not exist for failure to close the estate, the judge may make an order directing that the estate be closed within thirty (30) days and that the personal representative and his attorney receive no fee or other compensation from the estate.

Approved March 31, 1975.

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CHAPTER NO. 192

AN ACT PROVIDING THAT WRITTEN RECORDS CONTAINING ALL OF THE PERTINENT FACTS BE KEPT OF ALL SCHOOL BOARD MEETINGS AND THAT SUCH RECORDS BE MADE AVAILABLE TO PUBLIC UPON REQUEST; AMENDING SECTION 75-5932, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5932, R.C.M. 1947, is amended to read as follows:

"**75-5932. General powers and duties and record of acts.** The trustees of each district shall have the power and it shall be its duty to prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(1) adopt the policies required by this title; and

(2) adopt policies to implement or administer the requirements of the general law, this Title, the policies of the board of education or the rules and regulations of the superintendent of public instruction.

The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. *Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money, with the name of any person or business to whom payment is made, and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within five (5) working days following the approval of the minutes by the board, at a cost of no more than fifteen cents ($.15) per page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within five (5) working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than one (1) month following the meeting. If a board does not regularly meet on a monthly basis, a meeting of the trustees shall be called no later than one (1) month following each regular meeting for the purpose of approving the minutes of the previous meeting.*"

Approved March 31, 1975.

CHAPTER NO. 193

AN ACT AMENDING SECTION 43-202, R.C.M. 1947, TO PROVIDE THAT A LEGISLATOR'S TERM RUNS UNTIL HIS SUCCESSOR IS ELECTED AND QUALIFIED.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-202, R.C.M. 1947, is amended to read as follows:

"**43-202. Term of office.** The term of office of a senator is four years *or until his successor is elected and qualified,* and of a representative two years *or until his successor is elected and qualified*; and the term of service thereof shall begin on the first Monday of January next succeeding his election, and if a senator or representative be elected to fill a vacancy, his term of service shall begin on the next day after his election."

Approved March 31, 1975.

CHAPTER NO. 194

AN ACT AMENDING SECTION 11-1804, R.C.M. 1947, BY REQUIRING POLICE COMMISSIONS IN CITIES OF THE THIRD CLASS AND SOME TOWNS; AND REPEALING SECTION 11-1804.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1804, R.C.M. 1947, is amended to read as follows:

"**11-1804. Police commission required in all cities and some towns.** In *all* cities *and some towns* the mayor or, in those cities operating under the commission-manager plan, the manager thereof, shall nominate, and with the consent of the city council or commission appoint three residents of such city *or town,* who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of "police commission" who shall hold office for three years and that one such member must be appointed annually, at the first regular meeting of the city council or commission in May of each year. Provided, that at the first meeting of the council or commission in the month of May after the passage of this act, the mayor or in those cities operating under the commission-manager plan, the manager thereof, subject to the approval of the council or commission, shall appoint three members of such police commission, one to serve for one year, one for two years and one for three years from the date of their appointment and confirmation.

The compensation of the members of such board shall be fixed by the city council or commission not to exceed ten dollars *($10)* per day, nor more than fifty dollars *($50)* per month for any month for each member in cities of the first and second class.

This act shall apply to organized police departments in every city and town of the state of Montana *which have three (3) or more full-time law enforcement officials* regardless of the form of government under which said city or town may be operating or may at any time adopt."

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Section 2. Section 11-1804.1, R.C.M. 1947, is repealed.

Approved March 31, 1975.

CHAPTER NO. 195

AN ACT TO INCREASE THE SALARIES OF CERTAIN COUNTY OFFICERS; AMENDING SECTION 25-605, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-605, R.C.M. 1947, is amended to read as follows:

"**25-605. Salaries of certain county officers.** The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A
Below 3,000	*$4,085*
3,000 to 3,999	*$4,299*
4,000 to 4,999	*$4,394*
5,000 to 5,999	*$4,489*
6,000 to 6,999	*$4,598*
7,000 to 7,999	*$4,904*
8,000 to 8,999	*$4,988*
9,000 to 9,999	*$5,106*
10,000 to 12,499	*$5,189*
12,500 to 14,999	*$5,296*
15,000 to 17,499	*$5,403*
17,500 to 19,999	*$5,498*
20,000 to 24,999	*$5,605*
25,000 to 29,999	*$5,700*
30,000 to 39,999	*$5,806*
40,000 to 49,999	*$5,949*
50,000 to 59,999	*$6,163*
60,000 to 69,999	*$6,376*
70,000 to 79,999	*$6,614*
80,000 to 89,999	*$6,756*
90,000 to 99,999	*$6,970*
100,000 and over	*$7,184*

Taxable Valuation of County	Salary Col. B
Below $2,000,000	*$4,180*
$2,000,000 to 2,999,999	*$4,299*
3,000,000 to 3,999,999	*$4,394*
4,000,000 to 4,999,999	*$4,489*

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5,000,000 to 5,999,999	*$4,608*
6,000,000 to 6,999,999	*$4,904*
7,000,000 to 7,999,999	*$4,988*
8,000,000 to 9,999,999	*$5,106*
10,000,000 to 11,999,999	*$5,189*
12,000,000 to 13,999,999	*$5,296*
14,000,000 to 15,999,999	*$5,402*
16,000,000 to 17,999,999	*$5,497*
18,000,000 to 19,999,999	*$5,605*
20,000,000 to 22,499,999	*$5,700*
22,500,000 to 24,999,999	*$5,806*
25,000,000 to 29,999,999	*$5,949*
30,000,000 to 34,999,999	*$6,163*
35,000,000 to 39,999,999	*$6,376*
40,000,000 to 44,999,999	*$6,614*
45,000,000 to 49,999,999	*$6,756*
50,000,000 to 54,999,999	*$6,970*
55,000,000 to 59,999,999	*$7,184*
60,000,000 to 64,999,999	*$7,398*
65,000,000 to 69,999,999	*$7,611*
70,000,000 to 74,999,999	*$7,825*
75,000,000 to 79,999,999	*$8,039*
80,000,000 to 84,999,999	*$8,253*
85,000,000 to 89,999,999	*$8,466*
90,000,000 to 94,999,999	*$8,680*
95,000,000 to 99,999,999	*$8,894*
100,000,000 and over	*$9,108*

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars ($400) per year and county sheriffs and county attorneys shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of one thousand two hundred dollars ($1,200) per year. Notwithstanding the above, in each county with a population in excess of thirty thousand (30,000) the county attorney shall receive a salary of sixteen thousand dollars ($16,000) per year."

Section 2. One-half (½) of the total salary increases provided for in section 1 shall be effective July 1, 1975, and the remainder of such increases shall be effective July 1, 1976.

Approved March 31, 1975.

CHAPTER NO. 196

AN ACT AMENDING SECTION 5-527, R.C.M. 1947, TO ALLOW

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SAVINGS AND LOAN ASSOCIATIONS TO MAKE THE SAME CHARGES ON INSTALLMENT LOANS AS DO BANKS AND EXCLUDING APPLICATION OF THE SECTION TO LOANS FOR THE PURCHASE OF REAL ESTATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-527, R.C.M. 1947, is amended to read as follows:

"**5-527. Interest not to exceed lawful rate— permissible charges on installment loans.** No bank *or savings and loan association* shall demand or receive for loans or discounts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions. On loans *other than loans for purchase of real estate* to be repaid in one or more deferred installments a bank *or savings and loan association* may charge not to exceed the following schedule: On so much of the principal balance as does not exceed three hundred dollars ($300), eleven dollars ($11) per one hundred dollars ($100) per year; if the principal balance exceeds three hundred dollars ($300), but is less than one thousand dollars ($1,000), nine dollars ($9) per one hundred dollars ($100) per year on that portion over three hundred dollars ($300); if the principal balance exceeds one thousand dollars ($1,000), seven dollars ($7) per one hundred dollars ($100) per year on that portion over one thousand dollars ($1,000). Such charges shall be computed on the principal balance on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total balance thereof is required to be paid in installments. A minimum charge of twenty dollars ($20) may be made with respect to any installment loan made by a bank *or savings and loan association.* When an installment loan contract provides for payment other than in equal successive monthly installments the charge may be at a rate which will provide the same yield as is permitted monthly payment contracts having due regard for the schedule of payments in the contract."

Approved March 31, 1975.

CHAPTER NO. 197

AN ACT TO AMEND SECTION 11-1914, R.C.M. 1947, TO PROVIDE THAT TRUSTEES OF FIRE DEPARTMENT RELIEF ASSOCIATIONS IN THIRD CLASS CITIES MAY CONTINUE TO INVEST THEIR SURPLUS FUNDS IF THEY YIELD WITHIN ONE PERCENT OF THE YIELD ON INVESTMENTS OF PUBLIC RETIREMENT FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1914, R.C.M. 1947, is amended to read as follows:

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"11-1914. **Duties of trustees — investment of surplus funds.** (1) The board of trustees of the fire department relief association shall audit the accounts of the association at least every six (6) months and shall report the condition of them at the next regular meeting of the association. The management of the fire department relief associations in municipalities other than in first and second class cities shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees may invest the surplus funds of the association or any part of them, in any time or saving deposits, in any solvent bank, building and loan association or savings and loan association operating in the county where the city or town is located, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county, or city as are recommended by the state auditor and approved by the department of intergovernmental relations. At the time of purchase the investments must be stamped in boldface type, substantially as follows: "Property of the ... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association." Provided, however, that when the average yield on investments of public retirement funds under the state board of investments exceeds by one percent (1%) in any fiscal year the investment yield of said fire department relief association funds such funds shall be remitted to the state treasurer for investment by the state board of investments as is provided in the provisions of this section for associations in first and second class cities; and said fire department relief association shall submit every six (6) months a financial statement detailing their investments to the department of intergovernmental relations; and the department shall advise said fire department relief association of the current yield of investment of public retirement funds.

(2) The management of the fire department relief associations in first and second class cities shall be vested in the board of trustees of such associations subject to the following provisions of this section.

The board of trustees shall submit to the department of intergovernmental relations before October 1 in each odd-numbered year, all information requested by the department of intergovernmental relations necessary to complete an actuarial valuation of the funds of the association. This valuation is to be prepared by a qualified actuary selected by the department of intergovernmental relations. This valuation shall consider the actuarial soundness of the association's funds for the two (2) preceding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any other organization deemed by the municipal audit division to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department of intergovernmental relations shall submit to the state auditor a request for payment of the expenses incurred in securing the actuarial valuation. These expenses may not exceed six thousand dollars ($6,000) in any fiscal year and the state auditor shall make payment to the actuary designated by the request.

(3) Whenever the moneys in the disability and pension fund exceed:

(a) one and one-half (1 ½) times the monthly benefit paid in the preceding month, or

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(b) five thousand dollars ($5,000), whichever is greater, then the board shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311."

Approved March 31, 1975.

CHAPTER NO. 198

AN ACT DECLARING THE SALE OF GASOLINE ON ANY BASIS OTHER THAN GROSS VOLUME DELIVERED TO BE VOID.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 13-812 that reads as follows:

13-812. The sale of gasoline on other than gross volume basis unlawful. The sale of gasoline on a temperature corrected basis, or on any basis other than the gross volume of gasoline actually delivered, is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

Approved March 31, 1975.

CHAPTER NO. 199

AN ACT TO REQUIRE COUNTY CLERKS TO RECORD AND INDEX INFORMATION REGARDING SUBDIVISIONS; AMENDING SECTIONS 16-2902 AND 16-2905, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2902, R.C.M. 1947, is amended to read as follows:

"**16-2902. What to be recorded.** He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

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2. Certificates of births and deaths;

3. Wills devising real estate admitted to probate;

4. Official bonds;

5. Transcripts of judgments which by law are made liens upon real estate;

6. Instruments describing or relating to the separate property of married women, and sole trader judgments;

7. All orders and decrees made by the district court in probate matters affecting real estate which are required to be recorded;

8. Notice of pre-emption claims;

9. Notice and declaration of water rights;

10. Assignments for the benefit of creditors;

11. Affidavits of annual work done on mining claims;

12. Notices of mining locations and declaratory statement;

13. Estrays and lost property;

14. A book containing appraisement of state lands;

15. Such other writings as are required or permitted by law to be recorded; provided, nothing herein shall be construed as preventing the recording or photographing or copying of such instruments, separately, upon a single or loose page or pages of a book, if such page or pages shall immediately become a part of such book or volume, which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes hereinbefore prescribed."

Section 2. Section 16-2905, R.C.M. 1947, is amended to read as follows:

"**16-2905. Indexes to be kept.** Every county clerk, as ex officio recorder, must keep:

1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

3. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled";

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4. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled";

5. An index of mortgages, labeled "Releases of mortgages of real property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of release," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

6. An index of powers of attorney, labeled "Powers of attorney," each page divided into five columns, headed respectively: "Names of parties executing powers," "To whom powers are executed," "Date of powers," "Date of recording," "To whom powers are executed";

7. An index of leases, labeled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded";

8. An index of leases, labeled "Lessees," each page divided into four columns respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded";

9. An index of marriage certificates, labeled "Marriage certificate —Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

10. An index of marriage certificates, labeled "Marriage certificates —Women," each page divided into six columns, headed respectively: "Women married," (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

11. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignment," "When and where recorded";

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments," "Date of assignments," "When and where recorded";

13. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded";

14. An index of official bonds, labeled "Official bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded";

15. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices, when filed";

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16. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied";

17. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When filed," "When attachments discharged";

18. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively: "Parties to actions," "Notices, when recorded," "When filed";

19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled "Certificates of sale," each page divided into four columns, headed respectively: "Plaintiff," "Defendant," "Purchaser at sale," "Date of sale";

20. An index of the separate property of married women and sole trader judgments labeled "separate property of married women and sole traders," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded";

21. An index to affidavits for annual work done on mining claims, showing the name of the affiant, the name of the claim, where situated, and the year when the work was done, labeled "Annual work on mining claims";

22. An index of mining claims and declaratory statements, labeled "Notices of location of mining claims and declaratory statements," each page divided into four columns, headed respectively: "Locators," "Name of claim," "Notice, when filed," "Where recorded";

23. An index to the register of births and deaths;

24. An index to notices and declarations of water rights;

25. An index to the "Estray and lost property book";

26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed;

27. An index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

28. An index to filed subdivision plats containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

29. A miscellaneous index, in which must be indexed papers not hereinbefore stated."

Section 3. Notwithstanding section 43-517, the duty imposed upon the county clerks by this act is such that related costs are incurred as a part

of the clerk's normal operating procedures and does not necessitate a new means of financing.

Approved March 31, 1975.

CHAPTER NO. 200

AN ACT TO PROVIDE THAT BALLOTS CONCERNING A SPECIAL SESSION SHALL BE KEPT SECRET FOR A SPECIFIED TIME; AMENDING SECTION 43-322; AND REPEALING SECTION 43-323, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-322, R.C.M. 1947, is amended to read as follows:

"**43-322. Legislators' ballot to vote on special session.** Within five (5) days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

(1) the names of the legislators making the request;

(2) the reasons for calling the special session;

(3) the purposes of the special session;

(4) the requested convening date and time of the special session;

(5) the date by which legislators must return the ballot which may not be more than thirty (30) days after the date of the mailing of the ballots; and

(6) a stamped return envelope.

The secretary of state shall keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first."

Section 2. Section 43-323, R.C.M. 1947, is repealed.

Approved March 31, 1975.

CHAPTER NO. 201

AN ACT TO REQUIRE COUNTY WELFARE DEPARTMENTS TO ADMINISTER FOOD STAMP PROGRAMS AND SOCIAL SERVICES PROGRAMS; AMENDING SECTION 71-221, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-221, R.C.M. 1947, is amended to read as follows:

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"**71-221. Functions and activities of the county department.** The county department of public welfare shall be charged with the local administration of all forms of public assistance and welfare operations in the county, *including, but not limited to, food stamp programs and social services programs. Provided, however,* all such local administration must conform to federal and state law and the rules and regulations as established by the state department."

Section 2. This act is effective upon passage and approval.

Approved March 31, 1975.

CHAPTER NO. 202

AN ACT AUTHORIZING SCHOOL TRUSTEES TO PAY THE SCHOOL DISTRICT'S OBLIGATION FOR EMPLOYER CONTRIBUTION TO THE UNEMPLOYMENT COMPENSATION SYSTEM FROM THE SCHOOL DISTRICT'S RETIREMENT FUND, AMENDING SECTION 75-7204, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7204, R.C.M. 1947, is amended to read as follows:

"**75-7204. Retirement fund.** The trustees of any district employing personnel who are members of the teachers retirement system or the public employees retirement system, *or who are covered by unemployment compensation,* or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers retirement system shall be calculated in accordance with section 75-6207. The district's contribution for each employee who is a member of the public employees retirement system shall be calculated in accordance with section 68-603, R.C.M., 1947. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. *The district's contribution for each employee who is covered by unemployment compensation shall be paid in accordance with section 87-109.*

The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

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When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(1) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(a) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year; and

(b) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than thirty-five per cent (35%) of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(2) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (1) from the budgeted amount for expenditures in the final retirement fund budget.

The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts and all high school districts of the county, including any prorated joint district levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district and high school district retirement funds. The county commissioners shall fix and set such county levy in accordance with section 75-6717.

The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in section 75-6721."

Approved March 31, 1975.

CHAPTER NO. 203

AN ACT TO PROVIDE COMPENSATION AND EXPENSES FOR MEMBERS OF THE BOARD OF TRUSTEES OF THE HISTORICAL SOCIETY; AMENDING SECTION 82A-507, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-507, R.C.M. 1947, is amended to read as follows:

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"**82A-507. Board of trustees of state historical society — continued.** (1) The board of trustees of the state historical society, created in Title 44, chapter 5, R.C.M. 1947, is continued.

(2) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(3) Each member is entitled to be paid an amount to be determined by the department head, not to exceed twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for actual and necessary expenses incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for their actual and necessary expenses."

Approved March 31, 1975.

CHAPTER NO. 204

AN ACT TO PROVIDE THAT THE MONTANA HISTORICAL SOCIETY MAY USE PROCEEDS FROM SALES OF SURPLUS AND DUPLICATE ARTICLES EXCLUSIVELY FOR ACQUISITION OF LIBRARY, ART, AND MUSEUM ARTIFACTS; AMENDING SECTION 44-523, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-523, R.C.M. 1947, is amended to read as follows:

"**44-523. Powers and duties of trustees.** The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

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(6) To sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from such sales exclusively for acquisitions of library, art, and museum artifacts.

(7) To see that the collections and properties of the society are maintained in good order and repair.

(8) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(10) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury."

Approved March 31, 1975.

CHAPTER NO. 205

AN ACT TO AMEND SECTION 23-3003, R.C.M. 1947, PERTAINING TO DEPUTY REGISTRARS BY REQUIRING INSTRUCTION IN REGISTRATION FOR NOTARIES REGISTERING VOTERS; AND

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DELETING THE REQUIREMENT OF TAXPAYING STATUS FOR DEPUTY REGISTRARS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3003, R.C.M. 1947, is amended to read as follows:

"23-3003. Notaries public as deputy registrars — appointment of additional deputies — qualifications — duties. (1) All notaries public are deputy registrars in the county in which they reside. They may register electors residing in any precinct within the county. *No notary public may register any voter until he has been issued a certificate of approval by the county registrar certifying that he has received instructions on registration procedure from the county registrar.*

(2) The commissioners shall appoint a minimum of two (2) deputy registrars who are not notaries public, a minimum of one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. The number of appointed deputy registrars for each county shall always be equally divided between the two (2) major political parties. A deputy registrar shall:

(a) Be a qualified resident elector in the precinct for which he is appointed;

(b) Register electors residing in any precinct in the county;

(c) No duly appointed deputy registrar shall register any voter until such deputy registrar shall have been issued a certificate of approval by the county registrar, certifying that said deputy registrar has received instructions on registration procedure from the county registrar.

(3) Within three (3) days after a registration card is filled out, deputy registrars shall forward the card to the registrar. Registration cards properly executed prior to the registration deadline shall be accepted by the registrar for three (3) days after the deadline."

Approved March 31, 1975.

CHAPTER NO. 206

AN ACT TO PROVIDE FOR THE COLLECTION OF FEES BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, AND REQUIRING DEPOSIT OF SUCH FEES IN THE EARMARKED REVENUE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-210.4 that reads as follows:

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71-210.4. Social services fees. The state department of social and rehabilitation services is hereby authorized to establish and collect fees for social services furnished which are authorized pursuant to Title XX of the Social Security Act, Public Law 93-641. Such fees shall be based on a schedule determined by the department.

Section 2. There is a new R.C.M. section numbered 71-210.5 that reads as follows:

71-210.5. Fees earmarked. The state share of fees provided for by section 71-210.4 shall be paid over to the state treasurer for the credit of the earmarked revenue fund for the use of the state department of social and rehabilitation services in providing social services.

Approved March 31, 1975.

CHAPTER NO. 207

AN ACT PROVIDING THAT THE OFFICE OF THE GOVERNOR SHALL CONTINUOUSLY STUDY AND EVALUATE THE ORGANIZATIONAL STRUCTURE, MANAGEMENT PRACTICES AND FUNCTIONS OF THE EXECUTIVE BRANCH AND REPORT TO THE LEGISLATURE, BY REPEALING SECTION 2 OF CHAPTER 238, LAWS OF MONTANA 1973, (WHICH MADE THIS FUNCTION TEMPORARY); AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, of chapter 238, Laws of Montana 1973, is repealed.

Section 2. This act is effective on its passage and approval.

Approved March 31, 1975.

CHAPTER NO. 208

AN ACT REQUIRING CONTRACTORS TO ACQUIRE SURETY BONDS TO INSURE WORKERS' WAGES AND FRINGE BENEFITS; AND PROVIDING FOR EXCEPTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 41-2501 that reads as follows:

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41-2501. Definitions. As used in this act unless the context clearly requires otherwise:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Contractor" means any person, firm, association, or corporation engaged in the construction business.

Section 2. There is a new R.C.M. section numbered 41-2502 that reads as follows:

41-2502. Contractors — bond required for wages and fringe benefits. (1) Any contractor who contracts with another to do any work or perform any services for the other, except personal services of the contractor not involving work of hired employees, shall furnish a surety bond or other form of security to the other which shall be:

(a) approved by the commissioner;

(b) in an amount equal to the contractor's average monthly payroll as estimated by the commissioner;

(c) in the name of the state of Montana;

(d) for the purpose of insuring the wages and fringe benefits of all workers employed by the contractor for the contracted work;

(e) filed with the commissioner within one (1) week of the making of the contract or the commencement of work thereunder, whichever comes first.

(2) Any person contracting with a contractor who fails to require the contractor to acquire the surety bond provided for in subsection (1) is liable to the employees of that contractor for their wages and fringe benefits on that particular job.

(3) Only one (1) bond shall be required on any contractor for each year and when the bond is filed with, and approved by, the commissioner, the commissioner shall certify to any person contracting with a contractor that the bond is in full force and effect.

Section 3. There is a new R.C.M. section numbered 41-2503 that reads as follows:

41-2503. Employees — right to sue on bond. Any employee employed by a contractor may bring an action on the surety bond in his own name for unpaid wages and fringe benefits.

Section 4. There is a new R.C.M. section numbered 41-2504 that reads as follows:

41-2504. Exceptions. (1) The provisions of this act do not apply to any resident contractor who presents to the commissioner a financial statement certified by a licensed certified public accountant attesting to a net worth of the contractor in excess of fifty thousand dollars ($50,000).

(2) For purposes of this act a resident contractor means any person who is a bona fide resident of this state; any partnership or association,

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the majority of whose members are bona fide residents of this state; or any corporation organized and existing under the laws of the state of Montana.

Section 5. There is a new R.C.M. section numbered 41-2505 that reads as follows:

41-2505. Powers of commissioner. The commissioner shall promulgate any rules necessary to carry out the provisions of this act.

Section 6. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part, shall remain in force and effect.

Approved March 31, 1975.

CHAPTER NO. 209

AN ACT AMENDING SECTIONS 84-401 AND 84-501, R.C.M. 1947, TO PROVIDE THAT ALL TAXABLE REAL PROPERTY AND IMPROVEMENTS MUST BE ASSESSED AT FORTY PERCENT OF ITS FULL CASH VALUE AND STATING EXCEPTIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-401, R.C.M. 1947, is amended to read as follows:

"**84-401. Property assessed at forty percent (40%) of its full cash value — exceptions.** All taxable *real* property *and improvements* must be assessed at *forty percent (40%) of* its full cash value except*:*

(1) Properties in section 84-301, under Class One, shall be assessed at one hundred percent (100%) of full cash value.

(2) The assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes. All lands shall be valued as agricultural lands for tax purposes that meet the qualifications of section 84-437.2, R.C.M. 1947. Land and the improvements thereon must be separately assessed.

The taxable value of all property shall be determined by sections 84-301 and 84-308.

Section 2. Section 84-501, R.C.M. 1947, is amended to read as follows:

"**84-501. Property — how listed.** The state department of revenue must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.

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2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The *assessed* value of real estate, other than city or town lots.

6. The *assessed* value of improvements on such real estate.

7. The *assessed* value of city and town lots.

8. The *assessed* value of improvements on city and town lots.

9. The *assessed* value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The *assessed* value of all personal property, exclusive of money.

11. The amount of money.

12. Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation must, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, must be assessed against the exempt land, nor under any circumstances must the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total *assessed* value of all property.

15. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax."

Section 3. This act is effective on its passage and approval.

Approved March 31, 1975.

CHAPTER NO. 210

AN ACT TO AMEND SECTIONS 84-901 AND 84-902, R.C.M. 1947, RELATING TO THE STATEMENT TO BE FURNISHED TO THE STATE DEPARTMENT OF REVENUE BY OFFICERS OF CERTAIN TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER

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LINES, AND BY THE AGENT OF THE DEPARTMENT OF REVENUE; AND TO AMEND SECTION 84-906, R.C.M. 1947, RELATING TO THE STATEMENT OF THE AMOUNT APPORTIONED TO THE COUNTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-901, R.C.M. 1947, is amended to read as follows:

"**84-901. Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state department of revenue.** The president, secretary, or managing agent, or such other officer as the state department of revenue may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, microwave, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, *or state,* must, on or before the first Monday of March in each year, furnish the state department of revenue a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1. The whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association.

2. The total value of the entire property and plant both within and without the state, and the total value of that portion of the same within the state.

3. A complete description of the property within the state, giving the points of entrance into and the points of exit from the state, and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state.

4. Such other information regarding such property as may be required by the state department of revenue."

Section 2. Section 84-902, R.C.M. 1947, is amended to read as follows:

"**84-902. Statement to be transmitted by agent of the department of revenue to the state department of revenue.** The agent of the department in every county must, on the first Monday in May of each year, transmit to the state department of revenue a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other similar property in more than one county *or* state, whose property, or any part thereof, has been assessed by the agent of the department.

2. A complete description of all such property assessed to every such

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corporation, person, or association, together with the assessed value thereof.

3. After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made."

Section 3. Section 84-906, R.C.M. 1947, is amended to read as follows:

"84-906. Transmission of statement of amount apportioned to counties. The state department of revenue, must, not later than the second Monday of July, transmit or mail to the agent of the department in each county to which such apportionment has been made, a statement showing the length *or amount* of the property in such county; a description of the same sufficient for identification; the assessed value of the same as determined by the department; and the amount apportioned to the county. The agent of the department must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county."

Approved March 31, 1975.

CHAPTER NO. 211

AN ACT TO CONFORM THE LICENSING OF PROPRIETARY POSTSECONDARY INSTITUTIONS TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTION 75-9212, R.C.M. 1947; REPEALING SECTIONS 75-9213 AND 75-9214, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-9203, R.C.M. 1947, is amended to read as follows:

"75-9203. Exemptions. The following are exempt from the provisions of this act:

(1) institutions accredited by a national or regional accrediting agency recognized by either the board of public education or the board of regents of higher education and notification of such recognition having been given to the department by either board;

(2) education sponsored by a trade, business, professional or fraternal organization solely for the membership of the organization or offered without the payment of fees;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organiza-

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tions or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of chapter 8 of Title 66."

Section 2. Section 75-9212, R.C.M. 1947, is amended to read as follows:

"**75-9212. Revocation of license or permit.** If the department has reasonable cause to believe that a holder of a license or permit issued under any provision of this act has violated or is in violation of this act or criteria established under this act, the department may revoke the license or permit as provided.

A decision respecting revocation of a license or permit shall be made after opportunity for hearing before the department of business regulation. Matters concerning the revocation of licenses or permits, hearings and judicial review will be handled as contested cases under the Administrative Procedure Act (sections 82-4201 through 82-4225, R.C.M. 1947)."

Section 3. Sections 75-9213 and 75-9214, R.C.M. 1947, are repealed.

Section 4. This act is effective on its passage and approval.

Approved March 31, 1975.

CHAPTER NO. 212

AN ACT TO AMEND SECTION 75-6922, R.C.M. 1947, TO PROVIDE A METHOD FOR COMPUTING THE PERMISSIVE LEVY AND TO DETERMINE THE PERMISSIVE AMOUNT DEFICIENCY FOR ELEMENTARY AND HIGH SCHOOL DISTRICTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6922, R.C.M. 1947, is amended to read as follows:

"**75-6922. Permissive amount and permissive levy.** (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedule in section 75-6905, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. *Such excess above the foundation program amount shall be known as the "permissive amount",* and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in section 75-6926, supplemented with revenue from a levy on all the taxable property in the state.

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(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding nine (9) mills on all the taxable property in the district for the purpose of funding the permissive *amount* of the district. *The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by nine (9) or by using the number of mills which would fund the permissive amount, whichever is less.*

If the amount of revenue raised by this levy is not sufficient to fund the permissive *amount in full,* the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding six (6) mills on all taxable property in the district for the purpose of funding the permissive *amount* of the district. *The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by six (6) or by using the number of mills which would fund the permissive amount, whichever is less.*

If the amount of revenue raised by this levy is not sufficient to fund the permissive *amount in full,* the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(3) The director of the department of revenue shall annually set a levy on all the property of the state which will produce enough revenue to fund the permissive levy deficiency of the elementary and high school districts of the state. The proceeds of this levy shall be deposited to the earmarked revenue fund, permissive levy account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If *the* revenue collected *is not sufficient* to *finance the deficiencies* of the districts, *as determined according to subsection (2),* each district will receive the same percentage of its *deficiency.* Surplus revenue in the permissive levy account shall be used to reduce the state levy required for the next succeeding fiscal year. Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund, permissive levy account, for distribution during the next succeeding fiscal year."

Approved March 31, 1975.

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CHAPTER NO. 213

AN ACT TO GENERALLY REVISE THE LAW IN ORDER TO CHANGE THE TITLE OF DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO THAT OF THE DEPARTMENT OF COMMUNITY AFFAIRS IN ALL PERTINENT STATUTES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-901, R.C.M. 1947, is amended to read as follows:

"**82A-901. Department of community affairs — creation — head.** There is created a department of *community affairs*. The department head is a director of *community affairs* appointed by the governor in accordance with section 82A-106 of this act."

Section 2. Section 1-102, R.C.M. 1947, is amended to read as follows:

"**1-102. Definitions.** Unless the context requires otherwise, in this title:

(1) "Department" means the department of *community affairs* provided for in Title 82A, chapter 9.

(2) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(3) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(4) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(5) "Civil aircraft" means an aircraft other than a public aircraft.

(6) "Airport" means an area of land or water, except a restricted landing area, which is designed for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way.

(7) "Restricted landing area" means an area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, the use of which shall, except in case of emergency, be only as provided by the department.

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(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted area, and any combination of these facilities.

(9) "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon an airport or restricted landing area within this state.

(10) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(11) "Airman" means an individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers; or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances; and an individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(12) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(13) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give that instruction. It does not include a public school or university of this state, or an institution of higher learning accredited and approved for carrying on collegiate work.

(14) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling his facilities an "air school" or anything equivalent to an "air school," and without employing or using other instructors. It does not include an instructor in a public school or university of this state, or an institution of higher learning accredited and approved for carrying on collegiate work, while engaged in his duties as an instructor.

(15) "Flying club" means a person other than an individual, which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

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(16) "Person" means an individual, firm, partnership, private, municipal, or public corporation, company, association, joint stock association, or body politic; and includes a trustee, receiver, assignee, or other similar representative.

(17) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(18) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(19) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(20) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(21) "Airport hazard" means a structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off."

Section 3. Section 1-501, R.C.M. 1947, is amended to read as follows:

"**1-501. Receipt and disbursement of moneys.** (1) All costs and expenses of administering this title, including the salaries of employees of the department of *community affairs* engaged in functions pertaining to aeronautics, the expenses of members of the board of aeronautics, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues: All gifts and all legislative appropriations to the department for aeronautics; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the department.

(2) There shall be deposited in the earmarked revenue fund to the credit of the department the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(3) No part of the one cent (1¢) per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded."

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Section 4. Section 1-1101, R.C.M. 1947, is amended to read as follows:

"**1-1101. Department of community affairs to be custodian of all airplanes owned or leased by state.** The department of *community affairs* is hereby constituted the custodian of all airplanes owned or leased by the state of Montana or its boards, commissions or agencies."

Section 5. Section 1-1102, R.C.M. 1947, is amended to read as follows:

"**1-1102. Rules and regulations — authority and enforcement.** The department of *community affairs* is hereby delegated the power and authority:

(1) to formulate and enforce reasonable rules and regulations governing the use and operation of all airplanes under control of the division;

(2) to encourage and coordinate use of such airplanes by individual state agencies—an agency for which an aircraft has been specially equipped or modified shall have priority for the use of such aircraft;

(3) to charge the individual state agencies using the airplanes the estimated costs for administration, operation, maintenance, service, storage, and replacement;

(4) to establish a capital fund for new and replacement equipment using that portion of the money paid by individual state agencies for the use of the airplanes; and

(5) to place any surplus resulting from use charges into the capital fund."

Section 6. Section 1-1103, R.C.M. 1947, is amended to read as follows:

"**1-1103. Deficit.** Any deficit resulting from the operation of the airplanes by the department of *community affairs* shall be provided for in the state's general fund budget as determined by legislative action."

Section 7. Section 6-205, R.C.M. 1947, is amended to read as follows:

"**6-205. Department of community affairs to determine adequacy of amount.** The amount for which a county officer or employer or group of officers or employees shall be bonded is subject to the supervision of the department of *community affairs*. If the department of *community affairs* determines that the amount of the bond is inadequate, it may require the board of county commissioners to purchase an adequate bond."

Section 8. Section 6-603, R.C.M. 1947, is amended to read as follows:

"**6-603. Determination of adequacy of bond by department of community affairs.** The amount for which a city or town officer or employee or group of officers or employees shall be bonded is subject to the supervision of the department of *community affairs*. If the department of *community affairs* determines that the amount of the bond is inadequate it may require the city or town council or commission to purchase an adequate bond."

Section 9. Section 11-313, R.C.M. 1947, is amended to read as follows:

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"11-313. **Order of disincorporation on vote by electors.** In case the canvass reveals that sixty per cent (60%) or more of all the votes cast were in favor of disincorporation, the county commissioners shall, under their hands make and file in their office, and cause to be entered upon their proceedings, an order that the petition for disincorporation be granted, and declaring that the city or town is disincorporated. The order takes effect within sixty (60) days following the date of the order. A certified copy of the order shall be sent to the Montana secretary of state and the head of the state department of *community affairs.*"

Section 10. Section 11-315, R.C.M. 1947, is amended to read as follows:

"11-315. **Certification of financial condition.** Upon receiving a certified copy of the order of disincorporation, the director of the department of *community affairs* shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners. The statement shall include, but not be limited to, a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable and a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness. Under the supervision of the director of the department of *community affairs* or his agent, the city or town treasurer shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury, the check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated. The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this act."

Section 11. Section 11-806, R.C.M. 1947, is amended to read as follows:

"11-806. **Financial statement of city or town — contents — copies, to whom furnished.** (1) Within sixty (60) days after the close of each fiscal year the city or town clerk of each city and town must make out, in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) The indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) The amount of money received from taxes upon real and personal property;

(c) The amount of money received from fines, penalties, and forfeitures;

(d) The amount of money received from licenses;

(e) The amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) For each fund the amount of money, if any, on hand at the begin-

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ning of the fiscal year, the amount received and the amount paid out during the fiscal year. The amount of money paid out must be deducted from the total of the money on hand at the beginning of the fiscal year and the money received during the year, and a balance must be struck for each fund.

(g) A concise description of all property owned by the city or town with an approximate estimate of the value of it;

(h) The rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) Other information which may be required by the department of *community affairs.*

(2) The forms on which the statement shall be made shall be prescribed by the department of *community affairs.*

(3) The city or town clerk must, not later than August 31 following the close of each fiscal year, transmit one copy of the statement to the department of *community affairs,* and must present the other copy to the city or town council or commission at its first regular meeting in September.

(4) If a city or town clerk fails to file a copy of the statement with the department of *community affairs* within the time specified, the department of *community affairs,* without delay, shall examine the books, records, and accounts of the city or town. The department of *community affairs* shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special examination under the provisions of section 82-4504, and all of the provisions of section 82-4504 apply to it."

Section 12. Section 11-1403, R.C.M. 1947, is amended to read as follows:

"**11-1403. Estimates of revenues and disbursements to be filed by officers — forms — penalty for failure to file.** (1) Before July 1 of each year the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with the clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by the office, department, service, or institution for the current fiscal year. The council shall submit to the clerk the estimate of expenditures for all purposes for the council. The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts, and of maintaining them, and of installing lighting systems in special lighting districts, and maintaining them. There may not be included in the estimate, nor in either the preliminary or final budget of a municipality, any part of that cost which is to be paid by special assessments against the property within the districts, or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property in the sprinkling districts.

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(2) The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the clerk, and prescribed by the department of *community affairs*, and may only be varied or departed from with permission and approval of the department of *community affairs*. The city treasurer shall prepare the estimates for interest and debt reduction. The clerk shall prepare all other estimates which properly fall within the duties of his office.

(4) Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the clerk shall deduct and withhold, as a penalty, from the salary or compensation of each official failing or refusing to file the estimates, the sum of ten dollars ($10) for each day of delay. The total penalty against an official may not exceed fifty dollars ($50) per year. In the absence or disability of an official the duties required in this section devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause."

Section 13. Section 11-1404, R.C.M. 1947, is amended to read as follows:

"**11-1404. Tabulation by clerk of expenditure program — classifications, items included in.** (1) From estimates of revenue and disbursements the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year, and the sources of revenue by which it is to be financed. The tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of that last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) The estimates, appropriations, and expenditures shall be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

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(3) Within the class of "salaries and wages" each salary shall be set forth separately together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in an office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made but the proposed rate per day for each class or kind of labor shall be set forth. Expenditures under the general class of "maintenance and operation" shall be classified according to a standard classification to be established by the department of *community affairs*. Expenditures for "capital outlay" shall set forth and describe each object of expenditure separately. Under the general class of "interest and debt redemption" proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of "miscellaneous" expenditures for all purposes not listed in, or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund."

Section 14. Section 11-1406, R.C.M. 1947, is amended to read as follows:

"11-1406. Hearings on budget — adoption — fixing of tax levy. (1) On the Wednesday preceding the second Monday in August the council shall meet at the time and place designated in the notice provided in section 11-1405, at which time any taxpayer may appear and be heard for or against any part of the budget. The hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on the second Monday in August and prior to the fixing of the tax levies by the council. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning the estimates. The official shall be called in by the council upon the request of a taxpayer for questioning either by the council or a taxpayer upon the estimates.

(2) Upon the conclusion of the hearing the council shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. In so doing the council may not include any amount anticipated from the payment of taxes which became delinquent during a preceding fiscal year. The council shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures so authorized. There may not be added to the amount appropriated and authorized to be spent for an item or purpose, or to the total amount appropriated and authorized to be spent from any fund, other than a fund for the payment of principal or interest on outstanding bonds, any amount because of anticipated loss

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of revenue by reason of nonpayment of taxes levied for the fiscal year. The expenditures authorized from a fund, including reserve, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year in excess of outstanding unpaid warrants against the fund at the close of that fiscal year.

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) The council shall then determine the amount to be raised for each fund, for which a tax levy is to be made, by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year. The council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount, as a reserve to meet expenditures to be made from the fund during the months of July to November, of the next fiscal year. The amount added to any fund as a reserve may not exceed one-third (⅓) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, must not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized, and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be spent from each fund, the cash balance, in excess of outstanding unpaid warrants, at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter it at length in the official minutes of the council.

(5) On the second Monday in August, and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valua-

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tion of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget. Each levy shall be made in the manner provided by section 84-3802. If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond and interest becoming due during the current fiscal year, or within six (6) months after the current fiscal year, because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest, over and above the anticipated tax delinquency.

(6) The city clerk shall, not later than September 15, forward a complete copy of the final budget, together with the tax levies, to the department of *community affairs*. If a city clerk fails to forward the copy of the budget to the department of *community affairs* within the time required, the department of *community affairs* shall, before October 1, notify the mayor and council of the city that a copy of the budget has not been forwarded by the city clerk. The council must then withhold from the city clerk his salary or compensation for the month of September until the city clerk presents the council with a notice from the department of *community affairs* that the copy of the budget has been received."

Section 15. Section 11-1411, R.C.M. 1947, is amended to read as follows:

"**11-1411. Department of community affairs to make rules for carrying out act — accounting systems.** The department of *community affairs* shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of this act. It shall define what expenditures are chargeable to each budget account, and shall establish accounting and cost systems necessary to provide accurate budget information."

Section 16. Section 11-1829, R.C.M. 1947, is amended to read as follows:

"**11-1829. Actuarial valuation and investment of police reserve funds.** (1) The city treasurer shall submit to the department of *community affairs* before October 1 in each odd-numbered year all information requested by the department of *community affairs* necessary to complete an actuarial valuation of the police reserve funds. This valuation is to be prepared by a qualified actuary selected by the department of *community affairs*. This valuation shall consider the actuarial soundness of the police reserve funds for the two (2) preceding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any organization deemed by the department of *community affairs* to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department of *community affairs* shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed six thousand dollars ($6,000) in any fiscal year and the state auditor shall make payment to the actuary designated in the request.

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(2) Whenever the monies in the police reserve fund exceed:

(a) one and one-half (1-½) times the monthly benefit paid in the preceding month, or

(b) five thousand dollars ($5,000), whichever is greater, then the city treasurer shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311.

(3) After January 1, 1975, all investments of the police reserve fund shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The board of investment may make rules to implement this section."

Section 17. Section 11-1914, R.C.M. 1947, is amended to read as follows:

"**11-1914. Duties of trustees — investment of surplus funds.** (1) The board of trustees of the fire department relief association shall audit the accounts of the association at least every six (6) months and shall report the condition of them at the next regular meeting of the association. The management of the fire department relief associations in municipalities other than in first and second class cities shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees may invest the surplus funds of the association or any part of them, in any time or saving deposits, in any solvent bank, building and loan association or savings and loan association operating in the county where the city or town is located, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the department of *community affairs*. At the time of purchase the investments must be stamped in boldface type, substantially as follows: "Property of the .... Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association." Provided, however, that when the average yield on investments of public retirement funds under the state board of investments exceeds by one percent (1%) in any fiscal year the investment yield of said fire department relief association funds such funds shall be remitted to the state treasurer for investment by the state board of investments as is provided in the provisions of this section for associations in first and second class cities; and said fire department relief association shall submit every six (6) months a financial statement detailing their investments to the department of *community affairs*; and the department shall advise said fire department relief association of the current yield of investment of public retirement funds.

(2) The management of the fire department relief associations in first and second class cities shall be vested in the board of trustees of such associations subject to the following provisions of this section.

The board of trustees shall submit to the department of *community affairs* before October 1 in each odd-numbered year, all information

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requested by the department of *community affairs* necessary to complete an actuarial valuation of the funds of the association. This valuation is to be prepared by a qualified actuary selected by the department of *community affairs*. This valuation shall consider the actuarial soundness of the association's funds for the two (2) preceding fiscal years. A qualified actuary is a member of the American Academy of Actuaries or of any other organization deemed by the municipal audit division to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department of *community affairs* shall submit to the state auditor a request for payment of the expenses incurred in securing the actuarial valuation. These expenses may not exceed six thousand dollars ($6,000) in any fiscal year and the state auditor shall make payment to the actuary designated by the request.

(3) Whenever the monies in the disability and pension fund exceed:

(a) one and one-half (1 ½) times the monthly benefit paid in the preceding month, or

(b) five thousand dollars ($5,000), whichever is greater, then the board shall remit such excess amounts to the state treasurer. The state treasurer shall invest such remittances under the direction of the state board of investments as provided by section 79-311.

(4) After January 1, 1975, all investments held by a board of trustees shall be transferred as directed by the state board of investments. The state board of investments may defer any such transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The state board of investment may make rules to implement this section."

Section 18. Section 11-1923, R.C.M. 1947, is amended to read as follows:

"**11-1923. Annual report of the secretary and treasurer, prescribing qualifications for membership, official bond of the treasurer and examination of books and accounts.** (1) The secretary and treasurer of every fire department relief association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes the money has been paid and spent, and file it with the association, and a duplicate with the state auditor. No money may be paid to the treasurer of the fire department relief association until the report is filed. No one serving as a substitute or on probation, nor a person who has not been confirmed a member of an organized fire department, is eligible for membership in the relief association. No treasurer of an association may enter upon his duties until he has given to the association a sufficient bond of not less than fifty per cent (50%) of the amount of the cash funds and securities of the association, for the faithful performance of his duties according to law. The amount of the bond shall be approved and paid for by the association. The official bond may not exceed twenty-five thousand dollars ($25,000).

(2) Upon a majority vote of the members of the association, the city or town treasurer shall be ex officio treasurer of the fire department relief association and the official bond of the city or town treasurer shall cover

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the faithful discharge of his duties as ex officio treasurer of the fire department relief association. The cash in the firemen's relief fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town. All of the financial books and accounts of the association are subject at all times to examination by the department of *community affairs.*

(3) Upon complaint being made to it that the money or any part of it paid to the treasurer of the association has been or is being spent for an unauthorized purpose, and if the money upon examination is found to have been spent contrary to the authority given, the department of *community affairs* shall so report to the governor, upon whose directions to the state auditor no further warrants may be issued to the fire department relief association treasurer until the money so spent has been returned."

Section 19. Section 11-3862, R.C.M. 1947, is amended to read as follows:

"**11-3862. Surveys required — exceptions — standards for monumentation.** (1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

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(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(d) A single division of a parcel when the transaction is an occasional sale.

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created by a lien, mortgage, or trust indenture;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is created by the reservation of a life estate;

(f) which is created by lease or rental for farming and agricultural purposes.

(9) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

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(10) The department of *community affairs* shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(11) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 20. Section 11-3863, R.C.M. 1947, is amended to read as follows:

"**11-3863. Enforcement by governmental subdivisions — adoption of regulations — public hearing.** (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of *community affairs* for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of *community affairs*, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

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(3) In prescribing the minimum contents of the subdivision regulations, the department of *community affairs*, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than ten (10) parcels and less than twenty (20) acres, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.

(4) Where required the environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of

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the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent."

Section 21. Section 11-4110, R.C.M. 1947, is amended to read as follows:

"**11-4110. Advice and information by department of community affairs.** The department of *community affairs* shall furnish advice and information in connection with a project when requested to do so by a county or municipality."

Section 22. Section 16-1901, R.C.M. 1947, is amended to read as follows:

"**16-1901. County budget — estimates by county officers of revenues and expenditures — form of estimates — penalty for failure to file.** (1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, or institution of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by the office, department, service, or institution for the next fiscal year. The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board, and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge funds, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor, or if for construction in charge of a special engineer then by that engineer. The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(2) The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be approved at an election to be held.

(3) The estimates required in this section shall be submitted on forms provided by the county clerk and recorder, and prescribed by the depart-

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ment of *community affairs*, and may only be varied or departed from with permission and approval of that department. The county treasurer shall prepare the estimates for interest and debt reduction. The county clerk and recorder shall prepare all other estimates which properly fall within the duties of his office.

(4) Each of the officials shall file the estimates within the time and in the manner provided in the form and notice, and the county clerk shall withhold, as a penalty, from the salary of each official failing or refusing to file the estimates ten dollars ($10) for each day of delay. The total penalty against any official may not exceed fifty dollars ($50) in one year. In the absence or disability of an official the duties required by this section devolve upon the official or employee in charge of the office, department, service, or institution. The notice shall contain a copy of this penalty clause."

Section 23. Section 16-1902, R.C.M. 1947, is amended to read as follows:

"**16-1902. Tabulation by clerk of expenditure program — classifications — items included in.** (1) From those estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year, and the sources of revenue by which it is to be financed. The tabulation shall set forth the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year, the actual receipts for the last completed fiscal year, the surplus or unencumbered treasury balances at the close of that last fiscal year, and the amount necessary to be raised by taxation; the estimated expenditure for each office, department, service, or institution for the current fiscal year, the actual expenditures for the last completed fiscal year, and all contracts or other obligations which will affect the current year revenues.

(2) The estimates, appropriations, and expenditures shall be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized, or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(3) Within the general class of salaries and wages each salary shall be set forth separately together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the gen-

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eral purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor shall be set forth. Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the department of *community affairs*. Expenditures for capital outlay shall set forth and describe each object of expenditure separately. Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner. Under the general class of miscellaneous, expenditures for all purposes, not listed in or which cannot properly be assigned to any of the general classes, shall be set forth and itemized in detail.

(4) The total amount of emergency warrants issued during the preceding fiscal year shall be set forth with the amount issued for each emergency and the amount issued against each fund."

Section 24. Section 16-1903, R.C.M. 1947, is amended to read as follows:

"**16-1903. Consideration of budget by commissioners — notice of budget meeting.** The tabulation shall be submitted to the county commissioners by the county clerk and recorder on or before the first Monday of July. Upon receipt thereof the board of county commissioners shall immediately consider the budget in detail, and shall on or before the second Monday of July make any revisions, reductions, additions, or changes that they consider advisable. The tabulation, with any revisions, reductions, additions, or changes, is the preliminary budget for the fiscal year which it is intended to cover. Upon completion of the budget, the county clerk shall immediately transmit one copy of it to the department of *community affairs* and one copy to the department of revenue. The board of county commissioners shall then have a notice published stating that the board has completed its preliminary county budget for the current fiscal year, that the budget is open to inspection in the office of the county clerk and recorder, and that the board will meet on the Wednesday before the second Monday in August to fix the final budget and make appropriations. The notice shall state the time and place of the meeting and that any taxpayer may appear and be heard for or against any part of the budget. The notice shall be published at least one time in a newspaper of general circulation in the county."

Section 25. Section 16-1904, R.C.M. 1947, is amended to read as follows:

"**16-1904. Hearings on budget — adoption — fixing tax levies.** (1) On the Wednesday before the second Monday in August the county commissioners shall meet at the time and place designated in the notice provided for in section 16-1903, at which time any taxpayer may appear and be heard for or against any part of the budget. The hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on the second Monday in August and before the fixing of the tax levies by the board.

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(2) Upon the conclusion of the hearing the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources, except the taxation of property. In so doing the board may not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during a preceding fiscal year. The board shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. There may not be added to the amount to be appropriated and authorized to be spent for an item, or to the total amount appropriated and authorized to be spent from any fund, any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for that fiscal year. The total expenditures authorized to be made from any fund, including the reserve added to them, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year;

(b) the amount of estimated revenues to accrue to the funds; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

(3) The board shall then determine the amount to be raised for each fund by tax levy by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year. The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year, an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund, as the reserve may not exceed one-third (⅓) of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants. The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

(4) If the cash balance remaining in any of the several county funds, except the school fund, at the end of a fiscal year, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county after a public hearing. Notice of the hearing must be given not

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less than thirty (30) days prior to the hearing by publication in a newspaper of general circulation in the county and by posting in five (5) public places. The notice must state the date, time, and place of the hearing and state generally the purpose and proposed use of the funds.

(5) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, shall set out the total amount appropriated and authorized to be spent from each fund, the cash balance in the fund at the close of the preceding fiscal year, the amount estimated to accrue to the fund from sources other than taxation, the reserve for the next fiscal year, and the amount necessary to be raised for each fund by tax levy during the current fiscal year. The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(6) On the second Monday in August, and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy. The tax levy shall be made in the manner provided by section 84-3802.

(7) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of *community affairs*. If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board of county commissioners must then withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy."

Section 26. Section 16-1909, R.C.M. 1947, is amended to read as follows:

"**16-1909. Department of community affairs to make rules — accounting systems.** The department of *community affairs* shall make rules and classifications, and prescribe forms, necessary to carry out the provisions of sections 16-1901 through 16-1904 and 16-1906 through 16-1911, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information."

Section 27. Section 16-2049, R.C.M. 1947, is amended to read as follows:

"**16-2049. Petty cash fund.** The board of county commissioners, with

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the approval of the department of *community affairs*, may set aside a sum of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage, and other similar items which must be paid in cash at time of delivery. In counties having a county auditor, the county auditor is responsible for expenditures from the petty cash fund. In counties not having a county auditor, the county clerk is responsible for expenditures from the petty cash fund."

Section 28. Section 16-2618, R.C.M. 1947, is amended to read as follows:

"**16-2618. Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent banks, building and loan associations or savings and loan associations located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank, building and loan association or savings and loan association such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank, building and loan association or savings and loan association authorized herein above in a savings or time deposit; provided that the bank or banks or building and loan association or savings and loan association in which the money is deposited shall pay on the moneys no less than the rate of interest as is paid on money from private sources on the same terms. Refusal of any bank, building and loan association or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the ratable distribution of said moneys as set forth in subsection (4) of this act, and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only any such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds

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of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the department of *community affairs.* All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) (a) Demand deposits shall be placed only in banks. When more than one bank is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such demand deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such demand deposits shall be maintained.

(b) Such public moneys not necessary for immediate use by such county, city or town which are not invested in direct obligations of the United States government as authorized herein shall be placed in time or savings deposits with any bank, building and loan association or savings and loan association in the county, city or town. When more than one bank, building and loan association or savings and loan association is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such funds shall be distributed ratably among all of such banks, building and loan associations and savings and loan associations qualifying therefor, substantially in proportion to the total property taxes paid in such county or the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association willing to receive such time or savings deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such time or savings deposits among all of the banks, building and loan associations and

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savings and loan associations qualified to receive the same as in this act provided, to the end that an equitable distribution of such time or savings deposits shall be maintained.

(5) Whenever it shall come to the attention of the department of *community affairs* that the funds of any county, city or town are not properly distributed as provided in this act, the department of *community affairs* shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the department of *community affairs* to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank, building and loan associations or savings and loan associations exists in the county, city or town, or if any banks, building and loan associations or savings and loan associations existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any banks, building and loan associations or savings and loan associations within said county, city or town, shall be deposited under the terms of this act, in the banks, building and loan associations or savings and loan associations most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any banks, building and loan associations or savings and loan associations receiving such deposits, shall, through its president and cashier or secretary, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank, building and loan association or savings and loan association during the quarter, the amount of daily balance in dollars, and the amount of interest by such banks, building and loan associations or savings and loan associations credited or paid therefor, and showing that neither such bank, building and loan association or savings and loan association nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank, building and loan association or savings and loan association. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, building and loan association or savings and loan association, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) Except as provided in subsection (8) of this section, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

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(7) Any bank, building and loan association or savings and loan association pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, building and loan association or savings and loan association, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank, building and loan association or savings and loan association.

(8) Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school district in savings or time deposits in a state or national bank, building and loan association or savings and loan association insured by the F.D.I.C. or the F.S.L.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050."

Section 29. Section 16-2621, R.C.M. 1947, is amended to read as follows:

"**16-2621. Director of department of community affairs to sign trustee and deposit receipts.** The director of the department of *community affairs* shall sign all trustee and deposit receipts and releases required to be signed on behalf of the state in all cases where negotiable securities are placed in trust with a trustee in place of the actual securities, for security of county, city, and town deposits, under the laws of the state relating to the deposit of county, city, and town funds."

Section 30. Section 16-2625, R.C.M. 1947, is amended to read as follows:

"**16-2625. Must permit department of community affairs and county clerk to examine books.** (1) The treasurer must permit the department of *community affairs* and county clerk or the board of county commissioners to examine his books and count the money in the treasury, when any of them wants to make an examination or counting.

(2) The county clerk and recorder at the close of business each month shall count the cash in the office of the county treasurer and shall certify the amount in detail to the department of *community affairs*, retaining a copy of the certification in his office."

Section 31. Section 16-2924, R.C.M. 1947, is amended to read as follows:

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"**16-2924. Annual report of county clerk.** Within forty days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the department of *community affairs* a complete statement of the financial condition of the county. The statement shall be made out on the form designated by the department of *community affairs* and must show:

(1) A detailed description of all of the resources and liabilities of the county and the book value of them;

(2) The amount of moneys received showing the source of that revenue;

(3) The amount of moneys disbursed, with the purpose of disbursement;

(4) The operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(5) The assessed valuation of the real and personal property of the county, the rate of taxation, the amount of taxes delinquent for the preceding years, and such other items the department of *community affairs* may prescribe."

Section 32. Section 25-231, R.C.M. 1947, is amended to read as follows:

"**25-231. Fees of county clerks.** The county clerks must charge, for the use of their respective counties:

(1) For recording and indexing a written instrument allowed by law to be recorded, except as otherwise provided in this section:

(a) For the first folio, sixty cents (60¢), and for each subsequent folio or fraction of one, thirty cents (30¢);

(b) For each entry in index, twenty cents (20¢);

(c) For a certificate that an instrument has been recorded with seal affixed, one dollar ($1);

(2) For recording and indexing each real estate mortgage, or an assignment, renewal, or release of a real estate mortgage:

(a) For each folio, forty cents (40¢);

(b) For each entry in index, twenty cents (20¢);

(c) For a certificate that the mortgage, assignment, or release has been recorded with seal affixed, one dollar ($1);

(3) For recording and indexing each certificate of location of a quartz or placer mining claim, millsite claim, or notice of appropriation of water, including a certificate that the instrument has been recorded with seal affixed, four dollars ($4);

(4) For recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded

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with seal affixed, two dollars ($2) for the first mining claim in the affidavit, and fifty cents (50¢) for each additional mining claim included in it;

(5) For filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar ($1);

(6) For filing and indexing each certificate of incorporation or annual statement of a corporation, two dollars ($2);

(7) For recording and platting each townsite or map:

(a) For each lot up to and including one hundred, fifty cents (50¢);

(b) For each additional lot in excess of one hundred, ten cents (10¢);

(c) For recording the field notes of survey of a townsite, per folio, fifty cents (50¢).

(8) Where recording is done by photographic or similar process the county clerk and recorder shall charge, for filing and indexing, two dollars ($2) for each page or fraction of a page of the instrument;

(9) For a copy of a record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar ($1). In all cases where copies of a record or paper are to be certified by the county clerk and the copy is furnished to the clerk for certification, the clerk shall not charge a fee for the comparison of the copy, other than the fee of one dollar ($1) for his certificate and seal;

(10) For searching an index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

(11) For each entry of discharge or satisfaction of a mortgage, lien, or other instrument on the margin of record of it, or upon the original instrument, and noting the entry in the indexes concerned, fifty cents (50¢);

(12) For administering an oath with certificate and seal, no charge;

(13) For taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(14) For recording and indexing an instrument which may be recorded under section 73-104, and which pertains to land allotted to an Indian or land within an Indian reservation, except fee patents, no charge;

(15) For filing, indexing, or other services provided for by sections 87A-9-401 through 87A-9-407, the fees prescribed in those sections;

(16) For filing, recording, or indexing any other instrument not expressly provided for in this section, the same fee provided in this section for a similar service;

(17) On each instrument delivered to him for recording, the county clerk shall endorse on it all charges made for each service and the endorsement shall be recorded as a part of the instrument in his office in order that the department of *community affairs* may verify the charges

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and may see that they have been properly entered on the fee book or reception record in the county clerk's office."

Section 33. Section 27-222, R.C.M. 1947, is amended to read as follows:

"**27-222. Application for applicator's license.** (1) Application for a pesticide applicator's license provided for in section 27-221 shall be made annually, before applying pesticides in any calendar year, from the department of agriculture.

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the department of *community affairs* to operate the equipment described in the application."

Section 34. Section 32-4602, R.C.M. 1947, is amended to read as follows:

"**32-4602. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, and injuries to persons, and damage to property. The program shall be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, United States Code Annotated, as amended. Nothing in this chapter restricts or prohibits the establishment of standards which enlarge or implement the federal standards.

(2) "Political subdivisions" means every county, incorporated city or town, and school district within the boundaries of the state.

(3) "Department" means the department of *community affairs* provided for in Title 82A, chapter 9."

Section 35. Section 32-4605, R.C.M. 1947, is amended to read as follows:

"**32-4605. Duties.** (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and, in so doing, may co-operate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment, and all amendments to it. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs; certification of teachers; and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this chapter interferes with the provisions of section 75-7303 or chapter 79 of Title 75, R.C.M., 1947.

(2) The department of *community affairs* shall:

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(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools and certification of the schools and instructors and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use;

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention;

(d) establish a uniform system of driver licensing, including mental and physical standards; and

(e) prescribe and establish safety regulations for motor vehicles and operators."

Section 36. Section 59-514, R.C.M. 1947, is amended to read as follows:

"**59-514. Destruction of old county records may be ordered by commissioners with approval of department of community affairs — destruction of old school district records may be ordered by trustees with approval of the department of community affairs.** (1) A county officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of county commissioners and with the approval of the department of *community affairs.*

(2) A school officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the department of *community affairs.*"

Section 37. Section 59-515, R.C.M. 1947, is amended to read as follows:

"**59-515. Destruction of old city or town records.** A city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the city or town council or commission and with the approval of the department of *community affairs*, except that records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of *community affairs* after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the Public Service Commission of Montana."

Section 38. Section 69-7002, R.C.M. 1947, is amended to read as follows:

"**69-7002. Emergency medical services program — duties of department.** The department of health and environmental sciences shall establish and administer an emergency medical services program. The department is authorized to confer and cooperate with any and all other persons, organizations and governmental agencies that have an interest

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in emergency medical services problems and needs, and the department is authorized to accept, receive, expend and administer any and all funds which are now available or which may be donated, granted or appropriated to the department of health and environmental sciences. The department of health and environmental sciences and the department of *community affairs*, highway safety division and other interested departments or divisions, shall develop in writing a mutually agreeable plan of cooperation, so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis."

Section 39. Section 70-807, R.C.M. 1947, is amended to read as follows:

"**70-807. Study, evaluation and report on proposed facility — application for amendment of certificate — hearings.** (1) Upon receipt of an application complying with section 70-806, the department shall commence an intensive study and evaluation of the proposed facility and its effects, pursuant to section 70-816 of this act. Within six hundred (600) days following receipt of the application for a facility as defined in sections 70-803 (3)(a), 70-803 (b)(iv), 70-803 (3)(c), 70-803 (3)(d) and within one hundred eighty (180) days for a facility as defined in sections 70-803 (b) (iii) the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation pursuant to section 70-816 of this act and the final environmental impact statement.

The departments of health and environmental sciences, highways, *community affairs*, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. Such information may include opinions as to the advisability of granting or denying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(2) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(3) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt."

Section 40. Section 70-814, R.C.M. 1947, is amended to read as follows:

"**70-814. Annual long-range plan submitted — contents — available to public.** (1) Each utility shall furnish annually to the department for its review, a long-range plan for the construction and operation of utility facilities. Such plan shall be submitted on April 1 of each year. The plan shall include the following:

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(a) the general location, size and type of all utility facilities to be owned and operated by the utility whose construction is projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) a description of efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region;

(c) a description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility and explanation of the basis for such projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(2) The plan shall be made available to the public by the department, and the utility shall be required to give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental science, the department of highways, the department of public service regulation, the department of state lands and the department of *community affairs*. Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor."

Section 41. Section 75-6917, R.C.M. 1947, is amended to read as follows:

"**75-6917. Purpose of state equalization aid and duties of the board of public education for distribution.** Except as provided in 75-6917.1, the moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(1) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;

(2) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

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(3) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of *community affairs.*"

Section 42. Section 80-2618, R.C.M. 1947, is amended to read as follows:

"**80-2618. County funding to be supplied.** Every participating county of the state shall annually budget and appropriate for the establishment, support and operation of public developmental disabilities facilities and services an amount equal to fifty cents ($.50) per capita of the population of such county as shown by the division of planning and economic development of the state department of *community affairs.* The appropriation may be in an amount greater than the minimum herein provided and shall be made under the authority contained in section 9 [80-2619] herein and may be appropriated either out of the general fund of the county or by use of the permissive special mill levy as herein provided."

Section 43. Section 82-3702, R.C.M. 1947, is amended to read as follows:

"**82-3702. Declaration of necessity and public policy.** It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification, and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income, and promote the general welfare of the people of this state. The department of *community affairs* shall be regarded as performing a governmental function in carrying out the provisions of this chapter."

Section 44. Section 82-3705, R.C.M. 1947, is amended to read as follows:

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"82-3705. **Functions of department of community affairs — state planning.** The department of *community affairs* shall:

(A) State Planning.

(1) Develop and adopt a comprehensive plan for the physical development of the state;

(2) Make economic and social studies needed to accomplish the purposes of this chapter;

(3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

(4) Assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action;

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving those sites;

(7) Apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this chapter, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys, and comprehensive plans."

Section 45. Section 82-3705.1, R.C.M. 1947, is amended to read as follows:

"82-3705.1. **Functions of department of community affairs — community development.** The department of *community affairs* shall: (1) Cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

(2) Assist the governor in coordinating the activities of state agencies

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which have an impact on solution of community development problems and implementation of community plans;

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing."

Section 46. Section 82-3705.2, R.C.M. 1947, is amended to read as follows:

"**82-3705.2. Functions of department of community affairs — recreational development.** The department of *community affairs* shall: (1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public."

Section 47. Section 82-3705.3, R.C.M. 1947, is amended to read as follows:

"**82-3705.3. Functions of department of community affairs — economic development.** The department of *community affairs* shall: (1) Provide coordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises;

(4) Aid communities interested in obtaining new business or expanding existing business;

(5) Study and promote means of expanding markets for Montana products;

(6) Encourage and coordinate public and private agencies or bodies in publicizing the facilities and attractions of the state."

Section 48. Section 82-4501, R.C.M. 1947, is amended to read as follows:

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"**82-4501. Definition.** Unless the context requires otherwise, in this chapter "department" means the department of *community affairs* provided for in Title 82A, chapter 9."

Section 49. Section 82A-104, R.C.M. 1947, is amended to read as follows:

"**82A-104. Structure of executive branch of state government.** (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government, and their respective functions, are allocated by this title among and within the following departments or entities:

(a) Department of administration.

(b) Department of agriculture.

(c) Department of business regulation.

(d) State board of education.

(e) Department of fish and game.

(f) Department of health and environmental sciences.

(g) Department of highways.

(h) Department of institutions.

(i) Department of *community affairs.*

(j) Department of labor and industry.

(k) Department of justice.

(l) Department of livestock.

(m) Department of military affairs.

(n) Department of natural resources and conservation.

(o) Department of professional and occupational licensing.

(p) Department of public service regulation.

(q) Department of revenue.

(r) Department of social and rehabilitation services.

(s) Department of state lands.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor.""

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Section 50. Section 82A-403, R.C.M. 1947, is amended to read as follows:

"**82A-403. Additional functions transferred to department.** (1) The functions of the state examiner, except the functions with respect to the political subdivisions of the state and their officers and employees transferred to the department of *community affairs* and enumerated in chapter 9 of this act, are transferred to the department. In accordance with article VII, section 8 of the Montana constitution, the state examiner retains the function of examining the accounts of the state treasurer, supreme court clerks, district court clerks, and county treasurers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state examiner, except the references contained in the citations enumerated above in this subsection, means the department of business regulation.

(2) The functions of the Montana milk control board, which is created in Title 27, chapter 4, R.C.M. 1947, except the quasi-judicial functions contained in section 27-407, R.C.M. 1947 (pertaining to fixing minimum prices for milk), retained in the board under section 82A-406 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana milk control board, except the references in section 27-407, R.C.M. 1947, relating to the quasi-judicial functions retained in the board under section 82A-406 of this chapter, means the department of business regulation.

(3) The functions of the commissioner of agriculture, which are contained in Title 60, chapter 2, R.C.M. 1947 (pertaining to petroleum products regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 60, chapter 2, R.C.M. 1947, to the commissioner of agriculture means the department of business regulation.

(4) The functions of the department of agriculture, which are contained in Title 90, chapter 1, R.C.M. 1947 (pertaining to weights and measures), are transferred to the department of business regulation. Unless inconsistent with this act, any reference in Title 90, chapter 1, R.C.M. 1947, to the department of agriculture means the department of business regulation."

Section 51. Section 89-1215, R.C.M. 1947, is amended to read as follows:

"**89-1215. Records required to be kept — examination by department of community affairs.** It shall be the duty of the board of control to keep, or cause to be kept, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts, in the form prescribed by the department of *community affairs.*

It is hereby made the duty of the department of *community affairs* to prescribe such forms for the use of the board of control, and to examine the same as provided by law for the examination of the affairs of county offices."

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Section 52. Section 89-2107, R.C.M. 1947, is amended to read as follows:

"**89-2107. Records — inspection — fees — reports.** (1) The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district, in the form prescribed by the department of *community affairs*. The department of *community affairs* shall prescribe forms for the use of irrigation districts and examine them as provided by law for the examination of the affairs of county officers. The books and records shall be open to the inspection of any landowner of the district the same as other public records. The failure of the board of commissioners to comply with this section is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district, and shall be paid as are other bills against the districts.

(2) If a district is appointed fiscal agent of the United States, or by the United States is authorized to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or board.

(3) The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within ten (10) days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time, and shall publish the report at least once in a newspaper of the county.

(4) The department of *community affairs* shall notify the secretaries of the districts of the time of presenting the books and records at the courthouse for examination."

Section 53. Section 89-3422, R.C.M. 1947, is amended to read as follows:

"**89-3422. Department of community affairs to examine financial records — report — fee.** At least once each year the department of *community affairs* shall examine the financial records of each district and file a report of the examination with the department of natural resources and conservation and court. The department of *community affairs* shall collect a fee for the examination equal to that charged irrigation districts."

Section 54. **Construction of this act.** This act shall take effect on July 1, 1975. After that date, every reference to the department of intergovernmental relations shall be to the department of community affairs.

Approved March 31, 1975.

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CHAPTER NO. 214

AN ACT TO AMEND SECTION 66-2104, R.C.M. 1947, TO PROVIDE THAT THE BOARD OF ABSTRACTERS SHALL INCREASE THE COMPENSATION OF THE BOARD, AND TO PROVIDE ACTUAL EXPENSES AND MILEAGE AS AUTHORIZED BY SECTION 59-801, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2104, R.C.M. 1947, is amended to read as follows:

"**66-2104. Compensation of members of board — disposition of funds.** (1) Each member of the board shall receive a compensation of *twenty-five* dollars *($25)* per day for actual services while attending meetings or otherwise engaged in business connected with the board, and shall receive *mileage as authorized by section 59-801* and *actual* expenses while absent from home on business connected with the board.

(2) Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

Approved March 31, 1975.

CHAPTER NO. 215

AN ACT TO AMEND SECTIONS 66-1228, 66-1234, 66-1236, 66-2108, 66-2110, 66-2111, 66-2337, 66-2340, 66-2344, 66-2405, 66-2707, 66-2709, 66-2711, 66-3016, R.C.M. 1947, TO PROVIDE INCREASED FEES FOR APPLICATION, EXAMINATION, RENEWAL, LATE RENEWAL OR REGISTRATION FOR APPLICANTS, LICENSEES OR REGISTRANTS OF THE BOARDS OF NURSING, ABSTRACTERS, PROFESSIONAL ENGINEERS AND LAND SURVEYORS, PLUMBERS, MORTICIANS, AND HEARING AID DISPENSERS OF THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; TO PROVIDE THAT FEES MAY BE INCREASED OR DECREASED BY THE VARIOUS BOARDS WITHIN LIMITS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1228, R.C.M. 1947, is amended to read as follows:

"**66-1228. License — by examination — by endorsement without examination — license fees.** (1) An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or prac-

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tical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of *thirty-five* dollars *($35)* at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination, or if the examination is not taken, subject to deduction by the department of one dollar ($1) per subject of the examination which shall be retained by the department.

(2) The board—professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been licensed or registered as a professional nurse under the laws of another state, territory, or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of *thirty-five* dollars *($35)* at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars ($5), to be retained by the department.

(3) An applicant may, pending application for a professional nursing license under subsection (2) of this section, practice professional nursing as an employee of a physician, or in a hospital or public health agency for a period not longer than three (3) months from the date the department acknowledges receiving from the nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the nurse; and an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where the nurse intends to practice professional nursing. The affidavit of the nurse and the affidavit of the physician employer or administrator, assistant administrator or director of nursing of the hospital or public health agency shall contain the information deemed by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or, in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of the applicant."

Section 2. Section 66-1234, R.C.M. 1947, is amended to read as follows:

"**66-1234. Fee.** An applicant for a license to practice as a licensed practical nurse shall pay a fee of *thirty-five* dollars *($35)* to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars ($5) to be retained by the department."

Section 3. Section 66-1236, R.C.M. 1947, is amended to read as follows:

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"**66-1236. Renewal of license.** (1) The license of a person licensed under this act must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee of *ten* dollars *($10)* before January 1, *provided, however, that the board may increase or decrease the annual license fee so as to maintain in the earmarked revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter.* On receipt of the application and fee the department shall verify the accuracy of the application against its record, and from other sources the board considers reliable, and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31, following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(2) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(3) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this act."

Section 4. Section 66-2108, R.C.M. 1947, is amended to read as follows:

"**66-2108. Examination of applicants.** A person desiring to obtain a certificate of registration under this act shall make application to the department and shall pay to the department an examination fee *not to exceed fifty dollars ($50) and as set by the board.* The application shall be on a form prescribed by the board and shall contain information desired by the board. The board shall fix a date and place for the examination of the applicant, of which notice shall be given the applicant by mail, who shall present himself at the examination. The department, subject to section 82A-1603, shall examine the applicant under the rules adopted by the board."

Section 5. Section 66-2110, R.C.M. 1947, is amended to read as follows:

"**66-2110. Certificate of registration — contents and issuance — temporary certificates.** (1) The certificate of registration issued by the department shall recite, among other things, that the holder has complied with this act, and entitles the holder to take charge of an abstract office holding a certificate of authority under this act.

(2) Certificates of registration shall be issued on the payment of a five dollar ($5) fee and are valid for one (1) year from the date of issuance and shall be renewed annually by the department on application within thirty (30) days prior to expiration and on payment of *not to exceed five dollars ($5)* to the department *and as set by the board.* The board may

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authorize the department to issue temporary certificates of registration between meetings of the board."

Section 6. Section 66-2111, R.C.M. 1947, is amended to read as follows:

"**66-2111. Certificate of authority — contents and issuance.** (1) A person, firm, or corporation desiring to obtain a certificate of authority under this act shall make application to the department and shall pay to the department an application fee *not to exceed twenty-five* dollars *($25) as set by the board.* The application shall be on a form prescribed by the board and shall contain information desired by it.

(2) A person, firm, or corporation, who furnishes satisfactory proof to the board that the applicant has for use in the business a set of abstract books or other system of indices and has in charge of the business a registered abstracter, and who furnishes the bond, or other securities, and pays the application fee is entitled, on compliance with this law, to receive a certificate of authority.

(3) Certificates of authority are valid for one (1) year from the date of issuance and shall be renewed by the department on application within thirty (30) days prior to expiration and on payment of *a fee not to exceed twenty-five* dollars *($25)* to the department *which fee shall be set by the board.* The application shall be accompanied by an affidavit and such other evidence considered necessary, showing that the applicant has complied with this act.

(4) The certificate of authority issued by the department shall, among other things, recite that the bond or other securities have been filed and approved, and the certificate authorizes the person, firm, or corporation, named in it, to engage in and carry on the business of an abstracter of real estate titles in the county or counties of this state, in which the person, firm, or corporation has for use a set of abstract books or system of indices provided for in section 66-2101, and for that purpose to have access to the public records in an office of a city, county, or of the state during office hours, and to make memoranda or notation therefrom as may be necessary for the purpose of making abstracts, and the compiling, posting, copying, and keeping up of their abstract books, indices, or records, access to be during ordinary office hours."

Section 7. Section 66-2337, R.C.M. 1947, is amended to read as follows:

"**66-2337. Application for registration — fees.** (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The registration fee for professional engineers is *fifty* dollars *($50), thirty* dollars *($30)* of which shall accompany application, the remaining *twenty* dollars *($20)* to be paid on issuance of a certificate. When a certif-

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icate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer is *thirty* dollars *($30).*

(3) The fee for engineer-in-training is twenty dollars ($20), which shall accompany the application and shall include the cost of examination and issuance of a certificate. When certification as an engineer-in-training by another state, or a territory or possession of the United States or country, is accepted as evidence of qualification, the fee for engineer-in-training is *ten* dollars *($10).* When registration as a professional engineer is completed by an engineer-in-training, an additional fee of *twenty-five* dollars *($25)* shall be paid before issuance of a certificate as a professional engineer.

(4) The registration fee for land surveyors is *fifty* dollars *($50),* which shall accompany the application. The fee for registration as both a professional engineer and land surveyor is *seventy* dollars *($70), fifty* dollars *($50)* of which shall accompany the application, the remaining *twenty* dollars *($20)* to be paid on issuance of a certificate.

(5) If the board denies issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee."

Section 8. Section 66-2340, R.C.M. 1947, is amended to read as follows:

"**66-2340. Expiration and renewals — fee.** Certificates of registration expire on December 31 and become invalid on that date unless renewed. The department shall notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee required for its renewal for one (1) year. This notice shall be mailed at least one (1) month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December by the payment of a fee *not to exceed twenty* dollars *($20) as set by the board* for either a professional engineer or land surveyor or both. Failure on the part of a registrant to renew his certificate annually in the month of December does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for two (2) consecutive years shall be considered a new applicant and is required to submit a new application."

Section 9. Section 66-2344, R.C.M. 1947, is amended to read as follows:

"**66-2344. Registration of persons registered by other states or authorities.** The department, subject to approval by the board, may, on application and payment of a fee of *forty* dollars *($40),* issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the national bureau of engineering registration, or of a state, territory, or possession of the United States, or of a country, if the applicant's qualifications meet the requirements of this act and the rules of the board."

Section 10. Section 66-2405, R.C.M. 1947, is amended to read as follows:

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"**66-2405. Examination fee — expiration of license — annual renewal — fees — bond required of master plumbers.** No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department *one hundred* dollars *($100)* as an examination fee, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department *fifty* dollars *($50)* as an examination fee. A license when issued expires one (1) year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the department, and the payment of *not to exceed one hundred* dollars *($100) as set by the board* for a renewal of a master plumber's license, and *not to exceed twenty-five* dollars *($25) as set by the board* for a journeyman plumber's license, and renewal is also for the period of one (1) year. No master plumber's license may be issued or renewed unless the applicant has deposited with the department a good and sufficient bond to be approved by the board, or cash in the amount of five thousand dollars ($5,000) to insure the faithful performance of his duties arising out of the state plumbing code or this chapter."

Section 11. Section 66-2707, R.C.M. 1947, is amended to read as follows:

"**66-2707. Funeral directing.** The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the department. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license on payment of an annual *renewal* license fee to the department on July 1 of each year. The amount of the annual *renewal* license fee shall be set by the board but may not exceed *twenty-five* dollars *($25).* A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963."

Section 12. Section 66-2709, R.C.M. 1947, is amended to read as follows:

"**66-2709. Examination for morticians.** A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee *as set by the board but not to exceed seventy-five* dollars *($75),* may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary."

Section 13. Section 66-2711, R.C.M. 1947, is amended to read as follows:

"**66-2711. Mortician's license — fee and renewal.** (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual *renewal* fee shall be set by the board but may not exceed *fifty* dollars *($50).*

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(2) Failure to pay the annual *renewal* fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid *renewal* fees plus a penalty of twenty-five dollars ($25)."

Section 14. Section 66-3016, R.C.M. 1947, is amended to read as follows:

"66-3016. Annual renewal fee. A person who practices the fitting of hearing aids shall annually pay to the department a fee *not to exceed eighty* dollars *($80) as set by the board* for a renewal of his license. *The fee shall be increased ten percent (10%) for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board.* A person who applies for renewal, whose license was suspended for failure to renew, is not required to submit to an examination as a condition of renewal for a three (3) year period after suspension."

Section 15. This act is effective on its passage and approval.

Approved March 31, 1975.

CHAPTER NO. 216

AN ACT AMENDING THE OUTDOOR ADVERTISING ACT BY PROHIBITING CERTAIN OUTDOOR ADVERTISING DIRECTED AT AND VISIBLE FROM AN INTERSTATE OR PRIMARY HIGHWAY, BUT MORE THAN SIX HUNDRED SIXTY FEET THEREFROM; BY ADDING A DEFINITION OF "URBAN AREA"; BY LIMITING THE DEFINITION OF "UNZONED COMMERCIAL OR INDUSTRIAL AREA" TO A DEPTH OF SIX HUNDRED SIXTY FEET; BY PROVIDING FOR PERMITTING, REGULATION AND ACQUISITION OF OUTDOOR ADVERTISING LEGALLY IN EXISTENCE BEFORE THE EFFECTIVE DATE HEREOF, BUT NOT CONFORMING TO THE STANDARDS HEREIN ESTABLISHED; AMENDING SECTIONS 32-4716, 32-4717, 32-4719, 32-4720, 32-4722, AND 32-4723, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-4716, R.C.M. 1947, is amended to read as follows:

"32-4716. Definition of terms. As used in this act: (a) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(b) "Primary system" means that portion of connected main highways,

as officially designated or as may hereafter be so designated by the commission and approved by the secretary pursuant to the provisions of Title 23, United States Code, "Highways."

(c) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other structure which is designed, intended or used to advertise or inform and which is visible from any place on the main traveled way of the interstate or primary systems.

(d) "Commission" means the state highway commission of Montana.

(e) "Secretary" means the secretary of the United States department of transportation.

(f) "Safety rest area" means an area or site established and maintained within or adjacent to the right of way by or under public supervision or control, for the convenience of the traveling public.

(g) "Information center" means an area or site established or maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the commission may consider desirable.

(h) "Visible" means capable of being seen, and legible, without visual aid by a person of normal visual acuity.

(i) "Commercial or industrial zone" means an area which is used or reserved for business, commerce, or trade pursuant to comprehensive local zoning ordinances or regulations, or enabling state legislation, or state legislation itself, including highway service areas lawfully zoned as highway service zones where the primary use of the land is used or reserved for commercial and roadside services, other than outdoor advertising, to serve the traveling public. Areas temporarily zoned as commercial or industrial by an interim regulation or map adopted as an emergency measure pursuant to section 16-4711, R.C.M. 1947, shall not be considered as covered by this definition.

(j) "Unzoned commercial or industrial area" means an area not zoned by state or local law, regulation or ordinance which is occupied by one or more industrial or commercial activities, other than outdoor advertising, on the lands along the highway for a distance of six hundred (600) feet immediately adjacent to the activities, and those lands directly opposite on the other side of the highway to the extent of the same dimensions, *and to a maximum depth of six hundred sixty (660) feet when measured from the highway right-of-way*; provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the commission.

(k) "Commercial or industrial activities" means for purposes of subsection (j) those activities generally recognized as commercial or industrial by zoning authorities in this state, except that none of the following activities shall be considered commercial or industrial:

(i) Agricultural, forestry, grazing, farming and related activities including wayside fresh produce stands.

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(ii) Transient or temporary activities.

(iii) Activities not visible from the main traveled way.

(iv) Activities conducted in a building principally used as a residence.

(v) Railroad tracks and minor sidings.

(vi) Activities more than six hundred and sixty (660) feet from the nearest edge of the right of way.

(l) "Maintain" means to allow to exist, subject to the provisions of this act.

(m) "Maintenance" means to repair, refurbish, repaint or otherwise keep an existing sign structure in a state suitable for use.

(n) "Interchange" or "intersection" means those areas and their approach where traffic is channeled off or onto an interstate route including the de-acceleration lanes or acceleration lanes from or to another federal, state, county, city, or other route.

(o) "Urban areas" means an urbanized area or place as designated by the United States bureau of the census having a population of five thousand (5,000) or more and within boundaries fixed by the department of highways, which said boundaries shall, as a minimum, encompass the entire urban place designated by said bureau of the census."

Section 2. Section 32-4717, R.C.M. 1947, is amended to read as follows:

"**32-4717. Outdoor advertising prohibited in proximity to highway — exceptions — standards and permits.** (a) Outdoor advertising may not be erected or maintained which is within six hundred and sixty (660) feet of the nearest edge of the right of way and which is visible from any place on the main traveled way, of an interstate or primary system, except:

(i) Directional and other official signs and notices, which signs and notices include, but are not limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, as authorized or required by law.

(ii) Signs, displays and devices advertising the sale or lease of property upon which they are located.

(iii) Signs, displays and devices advertising activities conducted on the property upon which they are located.

(iv) Signs, displays and devices located in areas which are zoned industrial or commercial by a bona fide state, county or local zoning authority.

(v) Signs, displays and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays and devices located

within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of nine (9) months.

(b) Outdoor advertising authorized under subsections (i), (iv), and (v) of subsection (a) of this section shall conform with standards contained in, and shall bear permits required in, rules which are adopted by the commission and this act.

(c) Outdoor advertising may not be erected or maintained beyond six hundred sixty (660) feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if such outdoor advertising is or was erected with the purpose of its message being read from such main traveled way and visible from such main traveled way unless such outdoor advertising meets the criteria of subsections (i), (ii) or (iii) of subsection (a) of this section. Should such outdoor advertising meet said criteria, it shall conform with standards contained in rules which are adopted by the commission and this act."

Section 3. Section 32-4719, R.C.M. 1947, is amended to read as follows:

"**32-4719. Standards for permitted advertising.** *Except for outdoor advertising beyond six hundred sixty (660) feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area, outdoor advertising* permitted under section 32-4717 shall conform to the following requirements:

(a) Signs may not be erected or maintained which exceed one thousand two hundred (1,200) square feet in area including border and trim, but excluding base or apron, supports, and other structural members.

(b) Maximum length sixty (60) feet.

(c) Maximum height forty (40) feet, as measured from the ground or, if the sign is attached to a structure, as measured from the base of the sign itself.

(d) No more than two (2) facings visible and readable from the same direction on the main traveled way may be erected on any one (1) sign structure. Whenever two (2) facings are so positioned, neither shall exceed three hundred twenty-five (325) square feet.

(e) Double-faced, back-to-back and V-type signs shall be considered as a single sign or structure.

(f) Where two (2) or more faces, back to back, are supported by separate structures each shall be considered a single sign.

(g) No two (2) signs shall be spaced less than five hundred (500) feet apart adjacent to an interstate highway, or limited-access primary highway except that signs may be erected closer than five hundred (500) feet if they are separated by buildings or other obstructions in such a manner that only one (1) sign facing located within the above spacing distance is visible from the highway at any one (1) time.

(h) Signs may not be located within five hundred (500) feet of any of the following which are adjacent to the highway, unless the signs are in an incorporated area:

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(i) Public parks.

(ii) Public forests.

(iii) Public playgrounds.

(iv) Scenic areas designated as such by the state highway department or other state agency having and exercising this authority.

(v) Cemeteries.

(i) A sign may not be located on an interstate highway or freeway within five hundred (500) feet of an interchange, or intersection at grade, or rest area. The five hundred (500) feet is to be measured along the interstate or freeway from the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way.

(j) Signs may be illuminated, subject to the following restrictions:

(i) Signs which contain, include, or are illuminated by a flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather or similar information.

(ii) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at a portion of the traveled ways of the interstate or federal aid primary highway or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with a driver's operation of a motor vehicle are prohibited.

(iii) A sign may not be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(k) The location of sign structures situated on the primary highways between streets, roads or highways entering or intersecting the main traveled way shall conform to the following minimum spacing criteria:

(i) Where the distance between centerlines of intersecting streets or highways is less than one thousand (1,000) feet, a minimum spacing between structures of one hundred fifty (150) feet may be permitted between the intersecting streets or highways.

(ii) Where the distance between centerlines of intersecting streets or highways is one thousand (1,000) feet or more, minimum spacing between sign structures shall be three hundred (300) feet."

Section 4. Section 32-4720, R.C.M. 1947, is amended to read as follows:

"**32-4720. Permits required — identification tags — pre-existing structures.** (1) A sign authorized by subsections (i), (iv), and (v) of subsection (a) of section 32-4717 may not be constructed or maintained without a permit. Applications for permits shall be made to the department on forms furnished by it. The department shall require reasonable information to be furnished, including a statement that the owner or occupant of the land has consented to the erection or maintenance of the sign on

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the land. A permit must be obtained for each sign and the application for the permit must be accompanied by an initial fee of six dollars ($6).

(2) Permits shall be issued for three (3) years, assigned a permit number, and renewed every three (3) years thereafter upon payment of three dollars ($3) without the filing of a new application. All fees received shall be paid into the state highway account in the earmarked revenue fund.

(3) The department shall issue with each new permit a permanent identification tag not larger than six (6) square inches which shall be affixed to the sign in a position readily visible from the highway.

(4) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags, upon application and payment of the requisite fee for a structure lawfully in existence on June 23, 1971, and the permits shall thereafter be renewed for a period of time as is prescribed in this section, unless the structure is removed for improper maintenance.

(5) Notwithstanding the foregoing provisions of this section, the department shall issue permits and identification tags, upon application and payment of the requisite fee for outdoor advertising lawfully in existence on the day prior to the effective date of this act and made nonconforming by virtue of subsection (c) of section 32-4717, and the permits shall thereafter be renewed for a period of time as is prescribed in this section, unless the structure is removed for improper maintenance."

Section 5. Section 32-4722, R.C.M. 1947, is amended to read as follows:

"32-4722. Advertising deemed unlawful — notice to remove — hearing — appeal to district court. (1) The following outdoor advertising is unlawful:

(a) When erected after June 24, 1971, contrary to this act, *or erected after the effective date of this act beyond six hundred sixty (660) feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such main traveled way and visible from such main traveled way, unless such outdoor advertising meets the criteria of subsections (i), (ii) or (iii) of subsection (a) of section 32-4717*; or

(b) When a permit is not obtained as prescribed in this act; or

(c) When a permittee fails to comply with a notice of violation as provided in section 32-4721.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice in a conspicuous place on the structure, of its intention to remove the unlawful advertising. Within forty-five (45) days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed

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(3) If a hearing before the commission is not requested, or if there is no appeal taken from the commission's decision at the hearing, or if the commission's decision is affirmed on appeal, the department shall immediately remove, or cause to be removed, the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal. The department may enter upon lands bearing outdoor advertising and make examination of such advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising. The department incurs no liability for the entry or entries except for injuries resulting from negligence, wantonness or malice."

Section 6. Section 32-4723, R.C.M. 1947, is amended to read as follows:

"**32-4723. Acquisition of outdoor advertising rights — compensation.** (a) The department may acquire by gift, purchase, agreement, exchange or eminent domain, existing outdoor advertising and property rights pertaining to the advertising which were lawfully in existence on June 24, 1971, and which by virtue of *section 32-4717(a)* are nonconforming. *The department may likewise acquire by gift, purchase, agreement, exchange or eminent domain existing outdoor advertising and property rights pertaining to the advertising which were lawfully in existence on the day prior to the effective date of this act and made nonconforming by virtue of section 2 of this act.* Eminent domain shall be exercised in accordance with the laws of the state.

(b) Just compensation shall be paid for outdoor advertising and property rights pertaining to the advertising acquired through the process of eminent domain. The department may remove outdoor advertising found in violation of sections 32-4721 or 32-4722 without payment of compensation.

(c) Despite a contrary provision in this act, a sign may not be required to be removed without just compensation, unless found to be in violation of sections 32-4721 or 32-4722. Except as provided in sections 32-4721 and 32-4722, a sign may not be required to be removed unless at the time of removal or discontinuance there are sufficient funds, from whatever source, appropriated and immediately available to pay the just compensation required under this section, and unless at that time the federal funds required to be contributed under section 131 (g) of Title 23, United States Code, with respect to the outdoor advertising being removed, have been apportioned and are immediately available to this state."

Section 7. This act is effective on passage and approval.

Approved March 31, 1975.

CHAPTER NO. 217

AN ACT AMENDING SECTIONS 82-308 AND 82-309, R.C.M. 1947,

RELATING TO SURETY BONDS AND TAX PAYMENTS REQUIRED BY THE BOARD OF ATHLETICS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-308, R.C.M. 1947, is amended to read as follows:

"**82-308. Report of ticket sales — tax on gross receipts — disposition of tax moneys received.** *An individual,* club, corporation, or association which exercises the privileges conferred by this act, shall, within twenty-four (24) hours after the *completion* of a boxing, sparring, or wrestling contest or exhibition, furnish to the department a written report, verified by one of its officers *or owners,* showing the number of tickets sold for the boxing, sparring, or wrestling contest or exhibition and the amount of gross proceeds, and such other matters as the board prescribes, and shall also within twenty-four (24) hours pay to the *department* a tax of five percent (5%) of its total gross receipts after deducting the federal admission tax, if any, from the sale of tickets of admission to the boxing, sparring, or wrestling match or exhibition. The tax shall be deposited *by the department* in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

Section 2. Section 82-309, R.C.M. 1947, is amended to read as follows:

"**82-309. Bond of applicant for license.** Before a license is granted to a club, corporation, *individual,* or association to conduct, hold, or give a boxing, sparring, or wrestling match or exhibition, the applicant shall file with the *department* a *surety* bond, *executed by a surety company authorized to do business in this state,* in the sum of *not less than two thousand dollars ($2000) and not more than* five thousand dollars ($5,000), payable to this state, to be approved as to *the amount* by the board. The bond shall be conditioned on the payment of the tax imposed by section 82-308 *and any person injured by the willful, malicious or wrongful act of the licensee may bring an action on the surety bond in his own name to recover damages suffered by reason of such willful, malicious or wrongful act. The surety bond shall remain in effect for thirty (30) days beyond the license period granted by the board. Cash or its equivalent may be deposited with the department in lieu of the surety bond, but it is subject to the same time limits and conditions as a surety bond.* On the filing and approving of the *surety* bond, the department shall issue to the applicant a license."

Approved March 31, 1975.

CHAPTER NO. 218

AN ACT AMENDING SECTION 84-3804, R.C.M. 1947, TO ALLOW THE BOARD OF REGENTS TO ALLOCATE UP TO THREE MILLS OF THE SIX MILLS THAT ARE LEVIED ANNUALLY FOR THE SUPPORT OF THE MONTANA UNIVERSITY SYSTEM TO THE COMMUNITY COLLEGE DISTRICTS.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-3804, R.C.M. 1947, is amended to read as follows:

"**84-3804. Increase of state tax levy — support of public educational institutions subject to board of regents supervision.** Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system *and other public educational institutions subject to board of regents supervision. The board of regents may, at their discretion, allocate up to three (3) mills of the six (6) mill levy from the community college district in which the community college is located for the support and maintenance of the community college districts.*"

Approved March 31, 1975.

CHAPTER NO. 219

AN ACT TO ALLOW EXEMPTION FROM THE OPEN CUT MINING ACT ON CERTAIN FEDERAL LANDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 50-1517 that reads as follows:

50-1517. Exemption of operations on federal lands. This chapter shall not be applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering such land, impose controls for reclamation of said lands equal to or greater than those imposed by this chapter.

Approved March 31, 1975.

CHAPTER NO. 220

AN ACT TO ALLOW CONTRACTORS ON SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS TO SUBMIT ALTERNATIVE FORMS OF BID SECURITY UNDER THE GENERAL PROVISIONS OF TITLE 6, CHAPTERS 4 AND 5, R.C.M.

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1947; AMENDING SECTIONS 11-2209, 11-2213, 16-1607 AND 16-1609, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2209, R.C.M. 1947, is amended to read as follows:

"**11-2209. Bid for work and award of contract.** (1) Notice inviting proposals, and referring to the specifications on file, shall be published at least twice in a daily, semiweekly, or weekly newspaper, published and circulated in said city, designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three (3) public places.

The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under sections 11-2201 to 11-2243 of this code, reserving the right to select the kind or type of material to be used in making any such improvements, after the bids or proposals therefor shall have been opened, examined, and declared.

(2) The time fixed for the opening of bids shall be not less than ten (10) days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by *bid security as provided for in Title 6, chapter 5, R.C.M. 1947.* Said proposals or bids shall be delivered to the clerk of the said city council. The bids shall be opened in public at a time and place to be designated by the city council at the previous council meeting. The city council may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the municipality, and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid.

(3) If the bids are rejected, or no bids are received, the city council may, at any time within two (2) years thereafter, and whenever and as often as the city council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the *bid securities* corresponding to the bids so rejected. But the *bid securities* accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into, either by said lowest bidder, or by the owners of over fifty per centum (50%) of the frontage, whereupon said *bid security* shall be returned to said bidder. But if said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements, as hereinafter provided, then the *bid securities* accompanying his bid, and the amount therein mentioned, shall be declared to be forfeited to said city, and shall be collected by it and paid into the general fund. The provisions hereof shall be applicable to all special improvement districts

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created within one (1) year preceding the passage and approval of this act."

Section 2. Section 11-2213, R.C.M. 1947, is amended to read as follows:

"**11-2213. Bond of contractor.** All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council, *in the form and manner provided for in Title 6, chapter 4, R.C.M. 1947.*"

Section 3. Section 16-1607, R.C.M. 1947, is amended to read as follows:

"**16-1607. Notice inviting proposals — publication and posting — opening bids — readvertisement — contract for purchase.** (1) A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided shall be published at least twice in a daily, semiweekly or weekly newspaper published and circulated nearest to the boundaries of the said proposed improvement district, and which paper shall be designated by the board of county commissioners for that purpose, and a copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

(2) The board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind of type or materials to be used in making any or all of said improvements after the bids or proposals therefor shall have been opened, examined and declared.

(3) The time fixed for the opening of the bids shall not be less than fifteen days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by *bid security as provided for in Title 6, chapter 5, R.C.M. 1947.* Such proposals or bids shall be delivered to the county clerk, and the board of county commissioners shall, in open session, publicly open and examine and declare the same.

(4) The board of county commissioners may reject any and all proposals or bids should it deem this for the public good, and also the bid of any party who has been delinquent or unfaithful in any former contract with the board of county commissioners, and shall reject all proposals, other than the lowest regular proposal or bid of any responsible bidder, and may award the contract for such work or improvement, to the lowest responsible bidder at the prices named in his bid.

(5) If the bids are rejected or no bids are received the board of county commissioners may within six months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner in this section provided, and shall thereupon return to the proper parties the *bid securities* accompanying the bids so rejected, but the *bid security* accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work as hereinafter provided has been entered into, either by the said lowest bidder, or by the owners of over fifty per cent of frontage, whereupon said *bid security* shall be returned to said bidder,

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but if said bidder fails, neglects or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the *bid security* accompanying his bid, in the amount *therein* mentioned, shall be declared to be forfeited to the said board of county commissioners, and shall be collected by it, and paid into the general fund of the county.

(6) If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may, in their discretion, after the creation of the said special improvement district, and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just, without advertising for bids, or proposals, provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by section 16-1602."

Section 4. Section 16-1609, R.C.M. 1947, is amended to read as follows:

"**16-1609. Bond of contractor or contracting owners.** All contractors and contracting owners included shall at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, *in the form and manner provided for in Title 6, chapter 4, R.C.M. 1947.*"

Approved March 31, 1975.

CHAPTER NO. 221

AN ACT TO AMEND SECTION 50-1039, R.C.M. 1947, TO EXEMPT ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE FROM BONDING REQUIREMENTS OF THE STRIP MINING RECLAMATION ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1039, R.C.M. 1947, is amended to read as follows:

"**50-1039. Permit required to engage in strip mining — application for permit — contents — fee — bond — agencies exempt.** (1) An operator may not engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip mining upon the area of land described in his application and designated in the permit for a period of one (1) year from the date of its issuance. Such permit shall be renewable from year to year thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 50-1043, and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such

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renewal shall further be subject to the denial provisions of sections 50-1042 and 50-1046.

(2) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with subsection (2) of section 50-1050 and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten percent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (2) of section 50-1050 and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings

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or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set. Each cross-section shall depict the thickness and geological character of all known strata beginning with the top soil;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(3) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the drainage plan on and away from the area of land affected. This plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

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(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(5) An application fee of fifty dollars ($50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars ($200) nor more than twenty-five hundred dollars ($2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars ($2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. *A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board may require the filing of the bond prior to permit issuance or at any time thereafter.*

In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Approved March 31, 1975.

CHAPTER NO. 222

AN ACT REQUIRING THE OWNERS OF OIL AND GAS WELLS TO FILE BOTTOM-HOLE TEMPERATURES WITH THE BOARD OF OIL AND GAS CONSERVATION TO FACILITATE THE DISCOVERY OF POTENTIAL GEOTHERMAL ENERGY SOURCES; AMENDING SECTIONS 60-127, 60-144, AND 60-148, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-127, R.C.M. 1947, is amended to read as follows:

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"**60-127. Powers and duties of board.** (1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under section 82A-108, the board shall:

(a) Require: (i) identification of ownership of oil or gas wells, producing properties and tanks; (ii) the making and filing of acceptable well logs, *including bottom-hole temperatures, to facilitate the discovery of potential geothermal energy sources,* reports on well locations, and the filing of directional surveys, if made, however, logs of exploratory or wildcat wells need not be filed for a period of six (6) months following completion of those wells; (iii) the drilling, casing, producing and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires, and the pollution of fresh water supplies by oil, gas, salt, or brackish water; (iv) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized, and necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration; (v) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well; (vi) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof; and (vii) that every person who produces, transports or stores oil or gas in this state shall make available within this state for a period of five (5) years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable times, and that that person file with the board such reports as it may prescribe with respect to quantities, transportations, and storages of the oil or gas.

(b) For the purpose of preventing waste, (i) regulate the drilling, producing and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations, and, (ii) fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

(c) Regulate the disposal of salt water and oil field wastes.

(d) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(e) Adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter. The board shall promulgate rules to implement part (a)(iv) of this subsection (2), no later than November 1, 1974.

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(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wild cat wells" and make such orders as in its judgment are required to protect those wells, and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas from that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well."

Section 2. Section 60-144, R.C.M. 1947, is amended to read as follows:

"**60-144. Owners shall make available to board cores and cuttings.** *(1)* An owner drilling a well for gas or oil shall make available to the board at its field offices representative cores or chips, when available, the cuttings from the well, *and the bottom-hole temperatures of the wells, in order to facilitate the discovery of geothermal potential.* However, cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of the wells. The board may, however, relieve the owner of a well of the obligation to furnish cores, chips, or cuttings when in the opinion of the board, the furnishing thereof would be unduly burdensome for the owner; however, the owner desiring relief must apply to and receive permission from the board to not so furnish.

(2) The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the board's rules shall within six (6) months from the date of the cessation of the drilling of the well, make available to the board, complete sets of sample cuttings and representative cores or chips and well logs of the wells, which logs shall include among other information the size of casing used, the type and depth of water if any located, *and bottom-hole temperatures for geothermal purposes*; the cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the board until such time that the board desires to use the same; however, the board may not use the logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the board has elapsed unless the owner of the stratigraphic test well consents to their use by the board prior to the expiration of the three (3) year period. The board, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, may not give any person access to the cores, chips, cuttings or logs, and it may not disclose any information relating thereto or derived therefrom. The board shall require, and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of the well, a good and sufficient surety bond, to be approved prior to the commencement of the drilling, conditioned upon the proper plugging of the well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the board's rules provided for oil and gas wells, and, prior to abandonment, the wells shall be plugged by the owner

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thereof, or by the surety should the owner be in default, the plugging to conform to the standards set down and determined by the board.

(3) Notwithstanding subsection (2), bottom-hole temperatures furnished to the board by stratigraphic test well owners shall be public information immediately upon filing with the board."

Section 3. Section 60-148, R.C.M. 1947, is amended to read as follows:

"**60-148. Availability of facilities to bureau.** The board may make available to the authorized personnel or representatives of the bureau of mines and geology such facilities, equipment, records, and cores and cuttings, or samples of cores and cuttings, as are, or may be, required by the bureau in the furtherance of its oil and gas research and study. *Bottom-hole temperatures of oil and gas wells shall be made available to the bureau of mines and geology by the board in order to facilitate the determination of possible geothermal energy sources."*

Approved April 3, 1975.

CHAPTER NO. 223

AN ACT PROVIDING FOR THE RECOVERY OF INDIRECT COSTS OF FEDERAL ASSISTANCE PROGRAMS; REPEALING SECTIONS 79-2409 THROUGH 79-2415, R.C.M. 1947, WHICH REFER TO REIMBURSEMENT OF THE GENERAL FUND FOR COSTS OF CENTRAL SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 79-1020 that reads as follows:

79-1020. Definitions. As used in this act:

(1) "Grantee agency" means any agency of state government receiving federal funds;

(2) "Service agency" means state agencies which provide goods, facilities, and services to a grantee agency;

(3) "Indirect costs" means costs which benefit more than one agency or program and are not readily assignable to the agency or program specifically benefiting.

Section 2. There is a new R.C.M. section numbered 79-1021 that reads as follows:

79-1021. Statewide cost allocation plan. The budget director shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines.

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Section 3. There is a new R.C.M. section numbered 79-1022 that reads as follows:

79-1022. Indirect cost rates. Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

Section 4. Sections 79-2409 through 79-2415, R.C.M. 1947, are repealed.

Approved April 3, 1975.

CHAPTER NO. 224

AN ACT AMENDING SECTION 40-4913, R.C.M. 1947, RELATING TO EXPENSES OF BENEVOLENT ASSOCIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4913, R.C.M. 1947, is amended to read as follows:

"40-4913. Expenses—assessment for expenses— shown in annual statement. (1) The total expenses of any benevolent association during any calendar year shall not exceed the larger of the following:

(a) *Twenty percent (20%)* of the total amount received during such year, whether as assessments, dues, donations or by whatever name called, except fees collected for new memberships; or

(b) Fifteen dollars ($15) per death loss incurred during such year.

(2) Such an association may, instead of providing for expenses as in subsection (1) above, assess each of its members for expenses at an amount not to exceed three dollars ($3) per calendar year, except that such assessment shall not exceed four dollars ($4) per year where a membership certificate includes within its protection a family group consisting of two (2) or more persons. The proceeds of such assessments shall be placed in an expense fund out of which all of the expenses of the association for such year shall be paid. The association shall show the condition of such expense fund in its annual statement.

(3) The association shall state in its annual statement whether the expenses as to be shown in its next annual statement will be determined as in subsection (1) above, or whether the members will be assessed for the same as in subsection (2) above. No association shall use both methods, nor a combination of such methods."

Approved April 3, 1975.

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CHAPTER NO. 225

AN ACT AMENDING SECTION 92-1114, R.C.M. 1947, OF THE WORKMEN'S COMPENSATION ACT BY DELETING THE SHERIFFS' NOTICE REQUIREMENT WHEN THE DIVISION CANCELS AN EMPLOYER UNDER PLAN NO. 3 FOR FAILURE TO PAY PREMIUMS TO THE DIVISION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-1114, R.C.M. 1947, is amended to read as follows:

"**92-1114. Collection in case of default by employer—cancellation of right to operate under plan No. 3 for failure to pay premium.** *(1)* If any employer under plan No. 3 shall default in any payment to the *division*, the sum due may be collected by an action at law in the name of the state and such right of action shall be cumulative. The *division* is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the Workmen's Compensation Act for failure to pay the premiums due. *When* the *division* makes an order canceling an employer's right for failure to pay premiums *the division shall notify the employer of its intent to cancel the employer* at least thirty (30) days before the cancellation becomes effective. After *the* cancellation date the employer shall have the same status as an employer who is not enrolled under the Workmen's Compensation Act.

(o) When an employer's right to operate has been canceled by the *division* for failure to pay premiums and when the *division*, in its discretion finds that the property and assets of *the* employer are not sufficient to pay *the* premiums, the *division* may compromise *the* claim for premiums and accept a payment of an amount less than the total amount due."

Section 2. This act is effective on its passage and approval.

Approved April 3, 1975.

CHAPTER NO. 226

AN ACT TO PROVIDE NONLIABILITY FOR MEMBERS OF PEER REVIEW COMMITTEES, UTILIZATION REVIEW COMMITTEE, AND PROFESSIONAL STANDARDS REVIEW COMMITTEES; RELATING TO CERTAIN MEDICAL PROFESSIONALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-1052 that reads as follows:

66-1052. Nonliability for peer review — application to nonprofit

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corporations. (1) No member of a utilization review committee of a hospital, or long-term care facility, or of a utilization committee of a statewide or local society composed of doctors of medicine or doctors of osteopathic medicine and surgery or of a peer review or professional standards review committee of a statewide or local society composed of doctors of medicine, doctors of osteopathic medicine and surgery, doctors of dentistry, chiropractors, doctors of optometry, or registered pharmacists shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee, if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him, after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) This act also applies to any member of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee.

Approved April 3, 1975.

CHAPTER NO. 227

AN ACT TO PROVIDE THAT THE STATE AUDITOR PAY FIRE DEPARTMENT RELIEF ASSOCIATIONS IN FIRST AND SECOND CLASS CITIES OUT OF PREMIUM TAXES COLLECTED RATHER THAN FROM LICENSE FEES; AMENDING SECTION 11-1919, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1919, R.C.M. 1947, is amended to read as follows:

"**11-1919. State auditor to pay fire department relief association out of premium taxes collected from insurance companies.** At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the *premium taxes* on insurance risks *enumerated in subsection 2* collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

In the event of a disaster resulting in the death or injury sufficient to draw pension of ten percent (10%) of the active force and when the fund of such fire department relief association after receiving all moneys

as designated in section 11-1911 and section 11-1912 and the ten percent (10%) of annual compensation as designated in this act does not show at least the one (1) mill growth as referred to in section 11-1912 then the treasurer of such relief association shall request and the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every city or town entitled to receive the same, out of the *premium tax* collected by him, an additional amount to show at least the one (1) mill growth referred to in section 11-1912.

In the event a city of the second class is not entitled to receive a sum equal to twenty-five one hundredths (25/100) mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

(1) At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, except cities or towns of the first or second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town, except cities or towns of the first or second class, and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancellations and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars ($100) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars ($100).

(2) The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss

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or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle."

Approved April 3, 1975.

CHAPTER NO. 228

AN ACT TO AMEND SECTIONS 11-1917 AND 11-1919, R.C.M. 1947, TO CHANGE DATES CERTAIN REPORTS ARE DUE THE STATE AUDITOR TO APRIL 1.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1917, R.C.M. 1947, is amended to read as follows:

"**11-1917. Annual report of clerks of cities having fire department.** On or before *April 1*, annually, the clerk of every city having an organized fire department, or a partly paid or volunteer department, shall file with the commissioner of insurance of this state his certificate stating such fact, the system of water supply in use in such fire department, the number of its organized companies, steam, hand, or other engines, hook-and-ladder trucks, hose-carts, and feet of hose in actual use, and such other facts as the commissioner may require."

Section 2. Section 11-1919, R.C.M. 1947, is amended to read as follows:

"11-1919. **State auditor to pay fire department relief association out of license fees collected from insurance companies.** At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before *April 1* of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

In the event of a disaster resulting in the death or injury sufficient to draw pension of ten percent (10%) of the active force and when the fund of such fire department relief association after receiving all moneys as designated in section 11-1911 and section 11-1912 and the ten percent

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(10%) of annual compensation as designated in this act does not show at least the one (1) mill growth as referred to in section 11-1912 then the treasurer of such relief association shall request and the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every city or town entitled to receive the same, out of the license fees collected by him, an additional amount to show at least the one (1) mill growth referred to in section 11-1912.

In the event a city of the second class is not entitled to receive a sum equal to twenty-five one hundredths (25/100) mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

(1) At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, except cities or towns of the first or second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town, except cities or towns of the first or second class, and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancellations and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars ($100) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars ($100).

(2) The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or

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damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle."

Approved April 3, 1975.

CHAPTER NO. 229

AN ACT TO CLARIFY SECTION 11-1834, R.C.M. 1947, CONCERNING PAYMENTS MADE BY THE STATE AUDITOR TO POLICE DEPARTMENTS; AMENDING SAID SECTION 11-1834, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1834, R.C.M. 1947, is amended to read as follows:

"**11-1834. Annual state payments to municipality with police department.** At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant *for* an amount *computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to section 11-1919, R.C.M. 1947."*

Approved April 3, 1975.

CHAPTER NO. 230

AN ACT TO AMEND SECTION 11-1835, R.C.M. 1947, TO PROVIDE THAT THE STATE AUDITOR PAY POLICE DEPARTMENTS OUT OF PREMIUMS FOR ALL CASUALTY INSURANCE RATHER THAN FROM THE MOTOR VEHICLE PREMIUM PORTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1835, R.C.M. 1947, is amended to read as follows:

"**11-1835. State payments to come from insurance premium tax.** The payments provided for by sections 11-1829 and 11-1834 shall be paid from the premium tax collected on insurance sold in this state to insure

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against the *risks enumerated in section 11-1919.* Such payments will only be made after deductions have been made from the gross premium tax for cancellations and returned premiums."

Approved April 3, 1975.

CHAPTER NO. 231

AN ACT TO PROVIDE FOR THE REMOVAL OF ENCROACHMENTS ON HIGHWAYS UNDER THE JURISDICTION OF THE DEPARTMENT OF HIGHWAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 32-4411 that reads as follows:

32-4411. Highway encroachments — removal. (1) If any highway under the jurisdiction of the highway commission is encroached upon by a fence, building, structure, sign, marker, or other obstruction, the department of highways may give notice in writing to the person erecting or maintaining such encroachment, requiring the same to be removed.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the department of highways may immediately remove the same without the notice required by section 32-4412.

Section 2. There is a new R.C.M. section numbered 32-4412 that reads as follows:

32-4412. Notice of encroachment. (1) Notice to remove the encroachment, specifying the width of the highway right-of-way and the place and extent of the encroachment, must be given to the person erecting or maintaining such encroachment.

(2) Notice must be given in the following manner:

(a) in writing by certified mail sent to the person's business or personal address or by personal service;

(b) if such address cannot be found, by posting it on the encroachment.

Section 3. There is a new R.C.M. section numbered 32-4413 that reads as follows:

32-4413. Time limit for removal — penalty. If the encroachment is not permanently affixed to the land, such encroachment shall be removed from the right-of-way within two (2) days after receipt of the notice. If such an encroachment remains on the right-of-way after this period of time, the person who causes, owns, or controls the encroachment shall be liable for the cost of such removal.

Section 4. There is a new R.C.M. section numbered 32-4414 that reads as follows:

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32-4414. Denial of encroachment — department action — when owner to pay department expense. (1) If the encroachment is denied, the department of highways shall commence appropriate legal action to have said encroachment removed. If the department recovers a judgment, it shall have its costs, and if the encroachment is not removed within five (5) days after entry of judgment, then the department of highways may remove it at the expense of the person who causes, owns or controls it.

(2) If an encroachment affixed to the land is not denied, and is not removed within five (5) days after receipt of the notice, then the department of highways may remove it at the expense of the person who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

Approved April 3, 1975.

CHAPTER NO. 232

AN ACT TO AUTHORIZE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO OFFER PROTECTIVE SERVICES TO AGED PERSONS OR DISABLED ADULTS IN NEED OF SUCH SERVICES; AND PROVIDE A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-1914 that reads as follows:

71-1914. Short title. This act may be cited as the "Protective Services Act for Aged Persons or Disabled Adults".

Section 2. There is a new R.C.M. section numbered 71-1915 that reads as follows:

71-1915. Definitions. As used in this act:

(1) "Department" means the department of social and rehabilitation services.

(2) "Aged person" means an aged person as defined by the department.

(3) "Disabled adult" means a person eighteen (18) years of age or over who is defined by the department as disabled but not developmentally disabled.

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department.

Section 3. There is a new R.C.M. section numbered 71-1916 that reads as follows:

71-1916. Purpose. To ensure that aged persons or disabled adults in the state of Montana be afforded the opportunity to receive protective

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services and to implement certain provisions of the federal government's Title XX "Social Services Amendments of 1972", this legislature declares the department to be recognized as the public agency responsible for providing those services.

Section 4. There is a new R.C.M. section numbered 71-1917 that reads as follows:

71-1917. Duties of department. The department shall be responsible for acting on requests for protective services from aged persons or disabled adults or from relatives, friends, or other reputable persons requesting those services on behalf of an aged person or disabled adult.

Section 5. There is a new R.C.M. section numbered 71-1918 that reads as follows:

71-1918. Departmental authority. The department may implement a program for protective services by establishing appropriate rules and regulations which are not inconsistent with the department of social and rehabilitation services' activities.

Section 6. There is a new R.C.M. section numbered 71-1919 that reads as follows:

71-1919. Annual reports. The department shall make annual reports on the number of people served by this act and the type of protective services made available to the aged persons and disabled adults of Montana.

Section 7. **Effective date.** This act shall become effective October 1, 1975.

Approved April 3, 1975.

CHAPTER NO. 233

AN ACT TO PERMIT VOLUNTEER FIREMEN OR DISSOLVED FIRE COMPANIES IN UNINCORPORATED AREAS TO BE ELIGIBLE FOR PENSION BENEFITS FOR SERVICE PRIOR TO JULY 1, 1965; AMENDING SECTION 11-2023, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2023, R.C.M. 1947, is amended to read as follows:

"11-2023. Qualification for compensation. (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

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(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) Years of service. (I) To qualify for full participation he must have completed a total of at least twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village. (II) If prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire company, or by personal relocation due to transfer or loss of employment, or by personal disability, or by other factor beyond his reasonable control, then he may qualify for partial participation if he has completed at least ten (10) years' service; in that event, he shall be eligible for only a proportion of the benefits specified in subparagraph five (5) of section 11-2022, determined by multiplying such specified benefits by a fraction, the numerator of which shall be the number of years active service completed, and the denominator of which shall be twenty (20). (III) Provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars ($2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9) or ten (10) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (but he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age);

(C) During each of the years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company;

(D) He must have ceased to be an active member of any volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village, and if he applies for and receives pension benefits hereunder, he shall not thereafter be eligible to become an active member of any such volunteer fire company;

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(E) He must not be eligible for benefits under any fire department relief association organized in any incorporated area.

(F) Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

(G) Provided, however, that any volunteer fireman who was an active member of a volunteer fire company organized under the laws of the state in an unincorporated area, town, or village prior to July 1, 1965, shall receive credit against the said service requirement to the extent of one (1) year's credit for each two (2) years' service completed by him prior to July 1, 1965; but in no event shall more than ten (10) years' credit be allowed any such volunteer by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service under this section, the chief or former chief of each volunteer fire company shall on or before September 1, 1975, file with the public employees' retirement system a certificate, subscribed and verified under oath, setting the names and residence addresses of each of the members of said volunteer fire company who shall have qualified for one (1) or more years of credit to which each therefore shall be entitled. In addition, the reporting chief shall include in his report a sworn statement as to the reason for the delayed filing. The acceptance of this report will be subject to the approval of the board of administration, public employees' retirement system.

If it is not possible to secure a report from the chief or former chief, an individual may receive credit for service upon proper documentation acceptable to the board of administration."

Approved April 3, 1975.

CHAPTER NO. 234

AN ACT RELATING TO INDUSTRIAL DEVELOPMENT PROJECTS;

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DEFINING THE TERM 'PROJECT'; PROVIDING FOR USE OF BOND PROCEEDS; AMENDING SECTIONS 11-4101 AND 11-4107, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-4101, R.C.M. 1947, is amended to read as follows:

"**11-4101. Definition of terms.** As used in this act, unless the context otherwise requires: (1) Municipality shall mean any incorporated city or town in the state;

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing or industrial enterprises, recreation or tourist facilities, *state and federal governmental facilities,* and hospitals, long-term care facilities or medical facilities;

(3) Governing body shall mean the board or body in which the general legislative powers of the municipality or county are vested; and

(4) Mortgage shall mean a mortgage or a mortgage and deed of trust, or other security device."

Section 2. Section 11-4107, R.C.M. 1947, is amended to read as follows:

"**11-4107. Use of proceeds of bond sales.** The proceeds from the sale of any bonds issued under authority of this act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any project shall be deemed to include the following: The actual cost of acquiring or improving real estate for any project; the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvement; *bond reserves and premiums for insurance of lease rentals pledged to pay the bonds;* and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six (6) months after completion of construction."

Section 3. This act is effective on its passage and approval.

Approved April 3, 1975.

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CHAPTER NO. 235

AN ACT TO ESTABLISH AN AUDIT FEE AS A CHARGE AGAINST ADDITIONAL AMOUNTS COLLECTED AS A RESULT OF AUDIT SERVICES RENDERED BY THE DEPARTMENT OF REVENUE IN DETERMINING THE TAXABLE VALUE OF NET PROCEEDS, BANK SHARES, INVENTORIES, AND OTHER TYPES OF PROPERTY SUBJECT TO AD VALOREM TAXATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-708.9 that reads as follows:

84-708.9. Department audit of taxable value — costs of audit paid by county. When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells, bank shares, business inventories and all other types of property subject to ad valorem taxation. The costs incurred by the department of revenue, including per diem and mileage expense as well as salaries and benefits, shall be reimbursed from the amount collected as a result of the audit. In the event the property subject to audit is assessed within two (2) or more counties the department shall allocate the cost among the collections due each of the counties. Reimbursement shall be made solely for audit expense and not for other services provided to the counties by the department and may not exceed the amounts collected.

Section 2. There is a new R.C.M. section numbered 84-708.10 that reads as follows:

84-708.10. Audit fee paid to general fund. The cost of the audit shall be paid to the state treasurer for credit to the general fund.

Approved April 3, 1975.

CHAPTER NO. 236

AN ACT REPEALING SECTIONS 32-1113 THROUGH 32-1115, R.C.M. 1947, RELATING TO GUESTS IN MOTOR VEHICLES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sections 32-1113 through 32-1115, R.C.M. 1947, are repealed.

Approved April 3, 1975.

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CHAPTER NO. 237

AN ACT REGULATING THE FEES OF PRIVATE EMPLOYMENT AGENCIES; AMENDING SECTION 41-1422, R.C.M. 1947, RELATING TO EMPLOYER INTERVIEW REQUESTS TO PRIVATE EMPLOYMENT AGENCIES; AND AMENDING SECTION 41-1425, R.C.M. 1947, RELATING TO BONDS FOR PRIVATE EMPLOYMENT AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 41-1431.1 that reads as follows:

41-1431.1. Maximum fee. (1) No employment agency shall impose a fee in excess of ten (10) percent of the first month's gross income paid to any person placed for employment which lasts no longer than ninety (90) days if employment is terminated by the employer through no fault of the applicant. If the applicant resigns after starting employment or is discharged through his own fault after thirty (30) days of employment the applicant shall pay the full fee provided that an adjustment is not reached within fifteen (15) days from the last day worked. If the applicant resigns or terminates within thirty (30) days, the applicant shall not pay in excess of ten percent (10%) of the total gross income received.

(2) No employment agency shall impose a fee in excess of the percentage of the annual income based on the first month's gross income to any person placed for employment as provided for in the following schedule:

Schedule of Placement Fees

Monthly Income	Percent of First Full Month's Gross Income
Less than $200	30%
$200 to $224	35%
$225 to $299	40%
$300 to $349	50%
$350 to $499	60%
$500 to $649	65%
$650 to $799	70%
$800 and up	75%

Cost of doing business increases are to be reviewed by the department of labor biannually and any adjustments in rates may be approved by the department accordingly.

(3) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within seven (7) days after demand. Where, due to no fault of such applicant or because the employee or employment is other than as represented by the employment agency, employment is discontinued within thirty (30) days, then all fees paid pursuant to subsection (1) and (2) of this section by such applicant in excess of the applicable maximum for the period worked shall be returned in cash within seven (7) days after demand.

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Section 2. Section 41-1422, R.C.M. 1947, is amended to read as follows:

"**41-1422. Reconfirmation of job opening.** *Prior to referring an applicant with the prospective employer for employment, the employment agency shall reconfirm that the job opening does still exist and document this on the job order.*"

Section 3. Section 41-1425, R.C.M. 1947, is amended to read as follows:

"**41-1425. Bond of licensee — cash deposit.** Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars ($2,000) running to the state of Montana, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this act or of any rule or regulation adopted by the director pursuant to section 41-1423."

Section 4. There is a new R.C.M. section numbered 41-1434.1 that reads as follows:

41-1434.1. Filing of complaints. Any complaints filed with the department of labor shall be sent to that private employment agency involved, or to the Montana Private Employment Agency Association.

Approved April 3, 1975.

CHAPTER NO. 238

AN ACT AMENDING SECTIONS 41-2003, 41-2006, AND 41-2010, R.C.M. 1947, TO PROTECT THE STATE OF MONTANA FOR MONEY DUE IT AS A RESULT OF PAYROLL TAXES OWED THE EMPLOYMENT SECURITY DIVISION OF THE DEPARTMENT OF LABOR AND INDUSTRY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-2003, R.C.M. 1947, is amended to read as follows:

"**41-2003. Purpose of act.** The purpose of this act is to protect *the state of Montana and* employees of lessees conducting business as restaurants, bars and taverns and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees*; and to assure the payment of payroll taxes to the employment security division of the department of labor and industry.*"

Section 2. Section 41-2006, R.C.M. 1947, is amended to read as follows:

"**41-2006. Time of filing of bond — terms of bond — maintenance of bond required.** The bond and affidavit required by section 41-2005 shall be filed with the commissioner of labor and industry. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 41-2002 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees; *and to assure payment due the employment security division as a result of payroll taxes.*"

Section 3. Section 41-2010, R.C.M. 1947, is amended to read as follows:

"**41-2010. New or additional bond — sureties.** The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of *the state of Montana or* the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided."

Approved April 3, 1975.

CHAPTER NO. 239

AN ACT PROVIDING FOR COMMUNITY BASED SERVICES FOR THE DEVELOPMENTALLY DISABLED; AMENDING AND RENUMBERING SECTIONS 80-2611 THROUGH 80-2615, 80-2621 THROUGH 80-2625, R.C.M. 1947; REPEALING SECTIONS 80-2605 THROUGH 80-2610, 80-2616 THROUGH 80-2618, AND 80-2620, R.C.M. 1947; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2612, R.C.M. 1947, is renumbered 71-2402, and is amended to read as follows:

"**71-2402. Definitions.** As used in this act:

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other

neurological handicapping conditions closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(3) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical or other programmatic basis.

(4) "Comprehensive developmental disability *system*" means a system of services *including, but not limited to,* the following basic services with the intention of providing alternatives to institutionalization:

(a) evaluation services,

(b) diagnostic services,

(c) treatment services,

(d) day care services,

(e) training services,

(f) education services,

(g) employment services,

(h) recreation services,

(i) personal care services,

(j) domiciliary care services,

(k) special living arrangements services,

(l) counseling services,

(m) information and referral services,

(n) follow-along services,

(o) protective and other social and sociolegal services,

(p) transportation services."

Section 2. Section 80-2613, R.C.M. 1947, is renumbered 71-2403, and is amended to read as follows:

"**71-2403. Responsibilities of department.** The *department* shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program, which program shall include, but not be limited to, the implementation of developmental disabilities care and treatment, and prevention and research as can best be accomplished by community centered services. Every means shall be utilized to initiate and operate such service program in cooperation with local agencies, under provisions of sections *71-2405* and *71-2407* of this act;

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(3) *promote* scientific and medical research investigations relative to the incidence, cause, prevention and care of developmental disabilities;

(4) collect and disseminate information relating to developmental disabilities;

(5) prepare, with the advice of the *advisory* council, created *under* section *71-2406*, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. Such services shall include, but not be limited to, community comprehensive developmental disabilities services as referred to in section *71-2402*;

(6) provide by regulation for the evaluation of persons who apply for services, or persons admitted into *a program at a* developmental disability *facility*;

(7) provide state personnel to assist regional councils provided for in section 71-2407;

(8) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state."

Section 3. Section 80-2614, R.C.M. 1947, is renumbered 71-2404, and is amended to read as follows:

"**71-2404. Rules and regulations.** The *department* shall control developmental disabilities programs which receive any state assistance by *adopting* rules, for providing developmental disabilities facilities and services. It shall set minimum standards for programs, establish appropriate qualifications and compensation scales and personnel policies for persons employed in such programs. All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein shall imply the necessity for facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities, unless the developmental disabilities facility is providing professional or skilled medical care."

Section 4. Section 80-2615, R.C.M. 1947, is renumbered 71-2405, and is amended to read as follows:

"**71-2405. Community services.** (1) The *department* may establish and administer community comprehensive services, *programs,* clinics or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration or treatment of developmental disabilities. *Programs*, clinics or other services may be provided directly by state agencies, or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or in accredited health or long term care facilities.

(2) *Comprehensive services, programs, clinics or other facilities established or provided by the department under this chapter shall conform,*

as nearly as possible, to the plans of the advisory council created under 71-2406, and the regional councils provided for in 71-2407."

Section 5. There is a new R.C.M. section numbered 71-2406 that reads as follows:

71-2406. Advisory council. (1) The governor shall appoint a developmental disabilities advisory council in accordance with section 82A-110.

(2) The council is composed of twenty-one (21) members appointed or reappointed annually by the governor, and consists of the following:

(a) the directors of the departments of social and rehabilitation services, health and environmental sciences, and institutions, or their designees;

(b) the superintendent of public instruction or a designee;

(c) one (1) recognized private professional in each discipline of medicine, law, psychology and social work;

(d) two members of the state senate;

(e) two members of the state house of representatives;

(f) four (4) consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities; and

(g) one (1) member of each of the five (5) regional councils provided for in 71-2407, who shall also be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) The advisory council shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled;

(b) develop a plan for a statewide system of community based services for the developmentally disabled; and

(c) serve in any capacity required by federal law for the administration of federal programs for services to the developmentally disabled.

(4) The advisory council is allocated to the department.

Section 6. There is a new R.C.M. section numbered 71-2407 that reads as follows:

71-2407. Regional councils. (1) The department shall approve a citizens' organization as a regional council for each of the following five (5) regions:

(a) Region one, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Treasure, Rosebud, Custer, Fallon, Powder River, and Carter Counties;

(b) Region two, consisting of Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, and Cascade Counties;

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(c) Region three, consisting of Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Big Horn, and Carbon Counties;

(d) Region four, consisting of Powell, Lewis and Clark, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park Counties; and

(e) Region five, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli Counties.

(2) Under guidelines adopted by the department, a citizens' organization approved by the department shall be broadly representative of the region and at least one third (⅓) of its members shall be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) A citizens' organization shall be approved under procedures and rules adopted by the department.

(4) A regional council member, who is not a full-time employee of the state or of a county, is entitled to be reimbursed in an amount to be determined by the department, not to exceed twenty-five dollars ($25), for each day actually and necessarily engaged in the performance of board duties, and for travel as provided in section 59-801.

(5) A regional council shall:

(a) make an annual review and evaluation of needs and services within the region;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled within the region; and

(c) develop a plan for a system of community based services for the developmentally disabled within the region.

Section 7. Section 80-2619, R.C.M. 1947, is renumbered 71-2408, and is amended to read as follows:

"**71-2408. Counties and municipalities permitted to contribute to system.** (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state, may, in their discretion, contribute to any developmental disabilities facility approved by the *department*, without regard to whether they are within or outside of their respective jurisdictions. The boards of county commissioners of the counties may levy a tax up to, but not to exceed, one (1) mill on each dollar of taxable property within the county, which shall be in addition to all other county tax levies, all proceeds of *the* tax, if levied, shall be used for the sole purpose of support of developmental disabilities *services*.

(2) For the purpose of carrying out the provisions of this section, boards of county commissioners and governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities."

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Section 8. There is a new R.C.M. section numbered 71-2414 that reads as follows:

71-2414. Departments to cooperate. (1) The department of institutions, the department of social and rehabilitation services, department of health and environmental sciences and offices of superintendent of public instruction, shall cooperate on all aspects of each agency's respective programs for the developmentally disabled.

(2) Funds appropriated to the department of institutions and Boulder river school and hospital for programs for the developmentally disabled may be transferred, by budget amendment as provided in appropriation acts and with the approval of the governor, to the department of social and rehabilitation services for comprehensive developmental disability systems, if there is a significant reduction in residents at the Boulder river school and hospital which results in less expenditures at that institution than allowed by legislative appropriation.

(3) Funds appropriated to the department of social and rehabilitation services for comprehensive developmental disability systems may be transferred, by budget amendment as provided in appropriation acts and with the approval of the governor, to Boulder river school and hospital if the number of residents at that institution is not significantly reduced by the provision of services by the department under this chapter.

Section 9. Section 71-2414 is repealed on June 30, 1977.

Section 10. Section 80-2611, R.C.M. 1947, is renumbered 71-2401, R.C.M. 1947; section 80-2621, R.C.M. 1947, is renumbered 71-2409, R.C.M. 1947; section 80-2622, R.C.M. 1947, is renumbered 71-2410, R.C.M. 1947; section 80-2623, R.C.M. 1947, is renumbered 71-2411, R.C.M. 1947; section 80-2624, R.C.M. 1947, is renumbered 71-2412, R.C.M. 1947; and section 80-2625, R.C.M. 1947, is renumbered 71-2413, R.C.M. 1947.

Section 11. Sections 80-2605 through 80-2610, 80-2616 through 80-2618, and 80-2620, R.C.M. 1947, are repealed.

Section 12. This act is effective upon passage and approval.

Approved April 3, 1975.

CHAPTER NO. 240

AN ACT DEFINING LEGAL HOLIDAYS FOR SCHOOL PURPOSES AND AMENDING SECTION 19-108, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-108, R.C.M. 1947, is amended to read as follows:

"**19-108. Provisions of school code excepted.** Nothing contained *in section 19-107 defining legal holidays* shall be deemed to amend or change

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the provisions of *sections 75-7406 and 75-7407* said *sections* being hereby expressly declared to define legal holidays for school purposes only."

Approved April 3, 1975.

CHAPTER NO. 241

AN ACT AMENDING SECTION 92-703.1, R.C.M. 1947, TO CHANGE THE MAXIMUM WEEKLY WORKMEN'S COMPENSATION BENEFITS FOR PARTIAL DISABILITY FROM SIXTY DOLLARS PER WEEK TO ONE-HALF THE STATE'S AVERAGE WEEKLY WAGE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-703.1, R.C.M. 1947, is amended to read as follows:

"**92-703.1. Compensation for injuries causing partial disability.** *(1)* Weekly compensation benefits for injury producing partial disability shall be sixty-six and two-thirds percent (66 ⅔%) of the difference between the wages received at the time of the injury and the wages that the injured employee is capable of earning thereafter, subject to a maximum *weekly* compensation of *one-half (½) the state's average weekly wage.*

(2) The compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of partial disability; provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of the member."

Approved April 3, 1975.

CHAPTER NO. 242

AN ACT TO AMEND SECTIONS 3-2701 AND 16-1175, R.C.M. 1947, TO PERMIT THE DEPARTMENT OF LIVESTOCK AND COUNTIES TO OPERATE RODENT CONTROL PROGRAMS INDEPENDENT OF THE BUREAU OF SPORTS FISHERIES AND WILDLIFE OF THE DEPARTMENT OF INTERIOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2701, R.C.M. 1947, is amended to read as follows:

"**3-2701. Department of livestock to operate rodent control program.** The department of livestock *may establish and operate organized*

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and systematic programs for the control and *suppression* of jack rabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals in this state *when they* are injurious to agriculture, other industries, and the public health. For this purpose, the department of livestock may enter into written agreements with *appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals* covering the methods and procedures to be followed in the control and *suppression* of these noxious rodents and related animals, the extent of supervision to be exercised by the department of livestock, and the use and expenditure of funds appropriated, when this co-operation is necessary to promote the control and *suppression* of noxious rodents and related animals."

Section 2. Section 16-1175, R.C.M. 1947, is amended to read as follows:

"**16-1175. Control of noxious rodents — co-operation.** The boards of county commissioners shall co-operate with the department of livestock in the control and *suppression* of noxious rodents and related animals, such as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, and other rodents and related animals *when they* are injurious to agriculture, other industries, and the public health in accordance with organized and systematic plans of the *department of livestock* covering the methods and procedures to be followed in the control and *suppression* of these noxious rodents and related animals. For this purpose the boards of county commissioners shall enter into written agreements with the department of livestock covering the methods and procedures to be followed in the control and *suppression* of these noxious rodents and related animals, the extent of supervision to be exercised by the board of county commissioners, and the use and expenditures of funds appropriated. The boards of county commissioners, in co-operation with the department of livestock may enter into co-operative agreements with *state and federal* governmental agencies, counties, associations, corporations, or individuals when co-operation is necessary to promote the control and *suppression* of noxious rodents and related animals."

Section 3. This act is effective on passage and approval.

Approved April 3, 1975.

CHAPTER NO. 243

AN ACT AMENDING SECTION 75-8128, R.C.M. 1947, TO PROVIDE FINANCING FOR THE COMMUNITY COLLEGE DISTRICTS AT A 65/35 STATE TO LOCAL RATIO.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-8128, R.C.M. 1947, is amended to read as follows:

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"**75-8128. Financing budget.** The annual *operating* budget of a community college district shall be financed *at a 65/35 state to local ratio as defined by the board of regents* in the order enumerated below:

(1) *The estimated revenue to be realized from student tuition and fees as approved by the board of trustees.*

(2) *A mandatory mill levy on the community college district that when combined with subsection (1) of this section will provide thirty-five percent (35%) of the annual budget approved by the board of regents.*

(3) The total of the revenues expressed in subsections (1) and (2) shall be subtracted from the annual *operating* budget amount *as approved by the board of regents. The amount of the difference shall be financed by a state appropriation for the purpose of financing community colleges in an amount of sixty-five percent (65%).*

If the state cannot fund the community colleges at sixty-five percent (65%) of the regents' recommended budget, the state shall permit the community college districts to raise the additional funds under section 75-8131."

Approved April 3, 1975.

CHAPTER NO. 244

AN ACT TO AMEND SECTION 69-2105, R.C.M. 1947, TO ALLOW FOR INCLUSION OF URBAN SUBDIVISIONS AND URBAN ZONING DISTRICTS INTO THE JURISDICTIONAL AREA COVERED BY THE EXTENSION OF MUNICIPAL BUILDING CODES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2105, R.C.M. 1947, is amended to read as follows:

"**69-2105. Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (12) of this section.

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Department" means the department of administration provided for in Title 82A, chapter 2.

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(4) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(5) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(6) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(8) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(9) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) "State building code" means the state building code provided for in section 69-2111 or any portion of the code of limited application, and any of its modifications or amendments.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension of the jurisdictional area to include*: (a)* all or part of the area within four and one-half (4 ½) miles of the corporate limits of a municipality*; (b) all of any platted subdivision which is partially within four and one-half (4 ½) miles of the corporate limits of a municipality; and (c) all of any zoning district adopted pursuant to Title 16, chapter 41 or 47, R.C.M. 1947, which is partially within four and one-half (4 ½) miles of the corporate limits of a municipality. Distances shall be measured in a straight line in a horizontal plane.*

(13) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

(14) "Mobile home" means any dwelling unit larger than two hundred fifty-six (256) square feet in area which is either wholly or in substantial part manufactured at an off-site location and any movable or portable dwelling over thirty-two (32) feet in length and over eight (8) feet wide, constructed to be towed on its own chassis and designed without a permanent foundation for year-round occupancy, which includes one (1) or more

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components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two (2) or more units separately towable but designed to be joined into one (1) integral unit, as well as a portable dwelling composed of a single unit.

(15) "Recreational vehicle" means any movable or portable dwelling primarily designed as temporary living quarters for recreational, camping or travel use which either has its own motive power or is mounted on or drawn by another vehicle and which is less than thirty-two (32) feet in length."

Approved April 3, 1975.

CHAPTER NO. 245

AN ACT REPLACING THE NATURAL GAS DISTRIBUTORS' LICENSE TAX WITH A SEVERANCE TAX ON THE PRODUCTION OF NATURAL GAS; AMENDING SECTIONS 84-2202, 84-2203, 84-2204, 84-2206, 84-2207, AND 84-2209, R.C.M. 1947; AND REPEALING SECTIONS 84-2101 THROUGH 84-2110, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-2202, R.C.M. 1947, is amended to read as follows:

"**84-2202. Oil or gas producers' severance tax — amount — exceptions.** Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, *or natural gas* or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil *or natural gas* is extracted or produced, sufficient in quantity to justify the marketing of the same, must, each year when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a *severance* tax, computed at the following rates:

(a) Two and one-tenth per cent (2.1%) of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) Two and sixty-five hundredths per cent (2.65%) of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations

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in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such *severance* tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) Two and sixty-five hundredths percent (2.65%) of the total gross value of natural gas produced from each lease or unit, but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such gas, or petroleum, crude or mineral oil; and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

(d) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil *or natural gas* extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil *or natural gas*; in all leases establishing royalty interests entered into hereafter or in renewals of existing leases, or in division of proceeds orders, or by other contracts, such other owner or owners may agree with every person required to pay such tax that such other owner or owners will pay their prorata share of said tax, and that said prorata share may be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 2. Section 84-2203, R.C.M. 1947, is amended to read as follows:

"**84-2203. Payment of tax.** Such *severance* tax shall be paid in quarterly installments for the quarterly periods ending respectively March 31, June 30, September 30 and December 31, of each year, and the amount of the tax for each quarterly period shall be paid to the state department of revenue within *sixty (60)* days after the end of each quarterly period."

Section 3. Section 84-2204, R.C.M. 1947, is amended to read as follows:

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"84-2204. **Determination of gross value of product.** The total gross value of all petroleum, and other mineral or crude oil *or natural gas* produced each year shall be determined by taking the total number of barrels *or cubic feet* thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the state department of revenue; provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil *or cubic feet of gas* produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil *or gas* is produced or for pumping said petroleum or other mineral or crude oil *or gas* from the said well to a tank or pipeline."

Section 4. Section 84-2206, R.C.M. 1947, is amended to read as follows:

"84-2206. **Record of product — carriers to furnish data.** Every such person shall keep a record in such form as the state department of revenue may require, of all petroleum and other mineral or crude oil *or natural gas* extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents, or employees. It shall be the duty of railroad companies, pipeline and transportation companies carrying crude or mineral oil, *or natural gas* to furnish to the state department of revenue, whenever requested so to do, all data relative to the shipment of said products, that may be required to properly enforce the provisions of this act. The failure of any railroad company, pipeline, and transportation companies to comply with the provisions of this section shall make such companies liable to a penalty of one hundred ($100.00) dollars for each day it shall fail to furnish such statement."

Section 5. Section 84-2207, R.C.M. 1947, is amended to read as follows:

"84-2207. **Statement to accompany payment — records — collection of tax — refunds.** (1) Each and every person must, within sixty (60) days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil *or cubic feet of natural gas* produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as *severance* taxes for such quarter; and must, within such sixty (60) days deliver such statement and pay to the department of revenue the amount of the taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in

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this state, or owning, leasing, controlling, or operating more than one oil *or gas* well in this state, may include all thereof in one statement. The department of revenue shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department of revenue to examine each of such statements and compute the taxes thereon, and the amount so computed by the department of revenue shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the department of revenue within ten (10) days after written notice of the amount of the deficiency shall be mailed by the department of revenue to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters, or refunded if there is no subsequent tax liability."

Section 6. Section 84-2209, R.C.M. 1947, is amended to read as follows:

"**84-2209. Procedure to compute and collect tax in absence of statement.** If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil *or cubic feet of gas* extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the *severance* taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such *severance* taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same. The twenty-five per cent penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-2207 is provided to the said department."

Section 7. **Repealer.** Sections 84-2101 through 84-2110, R.C.M. 1947, are repealed.

Approved April 7, 1975.

CHAPTER NO. 246

AN ACT AMENDING SECTION 23-3304, R.C.M. 1947, TO PROVIDE AN

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ALTERNATIVE MEANS OF BALLOT ACCESS TO CANDIDATES WHO CANNOT AFFORD TO PAY FILING FEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3304, R.C.M. 1947, is amended to read as follows:

"**23-3304. Declaration of nomination — filing — fees — printing of victorious write-in candidates on general election ballot.** (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk. Each candidate for governor must send a joint declaration of nomination with a candidate for lieutenant governor.

(2) Each candidate must sign the declaration and send with it the required filing fee, *or in the case of a candidate who cannot afford the filing fee, send with it the documents required in lieu of a filing fee. The declaration of nomination shall* be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district court;

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices;

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars ($1,000) or less per annum, ten dollars ($10), except candidates for the legislature must pay fifteen dollars ($15);

(b) For offices having a salary of more than one thousand dollars ($1,000) per annum, one per cent (1%) of the total annual salary;

(c) For the offices of county commissioner;

(i) in counties of the first class, forty dollars ($40),

(ii) in counties of the second class, thirty-five dollars ($35),

(iii) in counties of the third class, thirty dollars ($30),

(iv) in counties of the fourth class, twenty-five dollars ($25),

(v) in counties of other classes, ten dollars ($10);

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(d) For offices in which compensation is paid in fees, five dollars ($5);

(e) For state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination shall not have his name printed on the general election ballot unless he:

(a) Files with the secretary of state, registrar, or city clerk, *within* at least ten (10) days after the primary a written declaration indicating his acceptance of the nomination;

(b) Pays the required filing fee;

(c) Received at least five per cent (5%) of the votes cast for the office at the last preceding general election.

(7) Indigent candidates. If a person is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(a) from a write-in candidate, a verified statement that he is unable to pay the filing fee;

(b) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(i) contains the name of the office to be filled, the candidate's name, residence, occupation and business address;

(ii) is signed by five percent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding general election; and

(iii) is signed by electors residing within the political division of the state in which the candidate petitions for nomination.

(8) The declaration for nomination shall be in form and contain information, prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination."

Approved April 7, 1975.

CHAPTER NO. 247

AN ACT TO GENERALLY REVISE THE POLITICAL CRIMINAL LIBEL AND DISCLAIMER REQUIREMENTS OF MONTANA'S ELECTION LAWS; AMENDING SECTION 23-4754; REPEALING SECTION 23-4774, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4754, R.C.M. 1947, is amended to read as follows:

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"**23-4754. Political criminal libel.** It shall be unlawful to write, print, *publish, mimeograph, type, or otherwise produce* or circulate through the mails or otherwise any letter, circular, bill, dodger, pamphlet, placard, poster, or *other document* relating to any election or to any candidate, *political party, political committee, or issue* at any election, unless the same shall bear on its face the name and address of the *person paying for the printing or publishing, and the name of* the printer and publisher thereof; and any person writing, printing, publishing, circulating, posting, *mimeographing, typing,* or causing to be written, printed, circulated, posted, *mimeographed, typed,* or published any such letter, bill, placard, *dodger, pamphlet,* circular, poster, *or other document* as aforesaid, which fails to bear on its face the name and address of the *person paying for the printing or publishing, and the name of* the printer or publisher, shall be guilty of an illegal practice, and shall on conviction thereof be punished by a fine of not less than ten dollars *($10)* nor more than one thousand dollars *($1,000).* If any letter, circular, poster, bill, *dodger, pamphlet,* publication, placard, *or other document* shall contain any false statement or charges reflecting on any candidate's character, morality, or integrity, the *person paying for the printing or publishing, and the name of* every person printing or knowingly assisting in the circulation, shall be guilty of political criminal libel, and upon conviction shall be punished by imprisonment *in a county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000), or both.* If the person charged with such crime shall prove on his trial that he had reasonable ground to believe such charge was true, and did believe it was true, and that he was not actuated by malice in making such publication, it shall be a sufficient defense to such charge. But in that event, and as a part of such defense, *the person paying for the printing or publishing, or* the printer or publisher or other person charged with such crime shall also prove that, at least fifteen days before such letter, circular, poster, bill, *dodger, pamphlet,* placard, *or other document* containing such false statement or statements was printed or circulated, he or they caused to be served personally and in person upon the candidate to whom it relates a copy thereof in writing, and calling his attention particularly to the charges contained therein, and that, before printing, publishing, or circulating such charges, he received and read any denial, defense, or explanation, if any, made or offered to him in writing by the accused candidate within ten days after the service of such charge upon the accused person."

Section 2. Section 23-4774, R.C.M. 1947, is repealed.

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved April 7, 1975.

CHAPTER NO. 248

AN ACT TO ESTABLISH PROCEDURES FOR MAINTAINING THE

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CONFIDENTIALITY OF TRADE SECRETS INVOLVED IN AIR POLLUTION CONTROL PROCEEDINGS; PROVIDING EMISSION DATA SHALL NOT BE CONSIDERED CONFIDENTIAL FOR THE PURPOSE OF THE CLEAN AIR ACT; AMENDING SECTION 69-3918, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3918, R.C.M. 1947, is amended to read as follows:

"**69-3918. Confidentiality of records.** (1) Records or other information concerning air contaminant sources which are furnished to or obtained by the board or department *are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant source which would, if disclosed, reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgement action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein. Any trade secrets not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. However, emission data shall never be considered confidential for the purposes of this section.*

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section."

Approved April 7, 1975.

CHAPTER NO. 249

AN ACT TO PROVIDE THAT AN AUTO LIABILITY INSURER MAY NOT REFUSE TO RENEW AN INSURANCE POLICY EXCEPT FOR NONPAYMENT OF PREMIUM OR SUSPENSION OR REVOCATION OF A DRIVER'S LICENSE; AMENDING SECTION 40-4409, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4409, R.C.M. 1947, is amended to read as follows:

"**40-4409. Advance notice required for nonrenewal — exceptions — exemptions.** No insurer shall fail to renew a policy unless it shall

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mail or deliver to the named insured, at the address shown in the policy, at least thirty (30) days' advance notice of its intention not to renew. Such notice shall contain or be accompanied by a statement that upon written request made not later than one (1) month following the termination date of the policy of the named insured mailed or delivered to the insurer, the insurer will notify the insured in writing, within fifteen (15) days of his request, the reason or reasons for such nonrenewal; provided, however, that notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile liability insurance policy procured by the insured, with respect to any automobile designated in both policies. This section shall not apply where the named insured has failed to discharge when due any of his obligations in connection with the payment of premiums for the policy, or the renewal thereof, or any installment payments therefor, whether payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit. This section shall not apply in any of the following cases:

(a) If the insurer has manifested its willingness to renew.

(b) In case of nonpayment of premium; provided that, notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.

(c) If the insured's agent or broker has secured other coverage acceptable to the insured at least twenty (20) days prior to the anniversary date of the policy or termination of the policy period.

Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

A notice of nonrenewal of a policy under this section, which policy has a term of less than six (6) months, is effective only when based on one or more of the reasons listed in section 40-4407(1)."

Approved April 7, 1975.

CHAPTER NO. 250

AN ACT TO REQUIRE THAT AN INQUEST BE HELD IN SITUATIONS WHERE A DEATH OCCURS IN A JAIL OR PENAL INSTITUTION, OR WHERE DEATH RESULTS FROM THE USE OF A FIREARM BY A PEACE OFFICER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 95-803, R.C.M. 1947, is amended to read as follows:

"95-803. Coroner to hold inquest — when. An inquest is a formal inquiry into the causes of and circumstances surrounding the death of

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any person. The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. *However, when the death of any person occurs in a jail or penal institution, or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.* The coroner shall conduct the inquest with the aid and assistance of the county attorney. For holding such inquest, the coroner must summon a jury of not more than nine (9) persons, qualified by law to serve as jurors. Such inquest is to be held in accordance with sections 95-804 through 95-809 of this chapter."

Approved April 7, 1975.

CHAPTER NO. 251

AN ACT AMENDING SECTION 93-1107, R.C.M. 1947, RELATING TO THE JUDGES' RETIREMENT SYSTEM AND REDEFINING FINAL SALARY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-1107, R.C.M. 1947, is amended to read as follows:

"93-1107. Judges' retirement system — definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions"—the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary"—shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired judge"—any person in receipt of a retirement allowance under this act.

"Board"—the Montana judges' retirement board.

"Penalty retirement age"—seventy (70) years of age.

"Contributor"—any person who has accumulated deductions in the fund standing to his credit.

"Final salary"—the annual *current* salary for the office retired from.

"Actuarial equivalent"—the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

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"Fund"—the Montana judges' retirement fund.

"Involuntary retirement"—a retirement not for cause and before retirement age.

"Member's annuity"—payments for life derived from contributions made by the contributor.

"Retirement allowance"—the state annuity plus the member's annuity.

"State annuity"—payments for life derived from contributions made by the state of Montana."

Approved April 7, 1975.

CHAPTER NO. 252

AN ACT AMENDING SECTION 74-608, R.C.M. 1947, TO ADD A NEW CLASS OF INDUSTRIAL EQUIPMENT UNDER THE RETAIL INSTALLMENT SALES ACT AND SETTING THE MAXIMUM FINANCE CHARGE FOR THE NEW CLASS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 74-608, R.C.M. 1947, is amended to read as follows:

"74-608. Finance charge limitation. (a) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(1) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made—seven dollars ($7) per one hundred dollars ($100) per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than two (2) years prior to the year in which the sale is made—nine dollars ($9) per one hundred dollars ($100) per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than two (2) years prior to the year in which the sale is made—eleven dollars ($11) per one hundred dollars ($100) per year.

(2) As to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over five thousand dollars ($5,000)—nine dollars ($9) per one hundred dollars ($100) per year. This subsection shall not apply to agricultural equipment.

(3) As to services and goods other than *as provided under subsections*

(1) and (2) above: (i) On so much of the principal balance as does not exceed three hundred dollars ($300), eleven dollars ($11), per one hundred dollars ($100) per year; (ii) if the principal balance exceeds three hundred dollars ($300), but is less than one thousand dollars ($1,000), nine dollars ($9) per one hundred dollars ($100) per year on that portion over three hundred dollars ($300); (iii) if the principal balance exceeds one thousand dollars ($1,000), seven dollars ($7) per one hundred dollars ($100) per year on that portion over one thousand dollars ($1,000).

(b) Such finance charge shall be computed on the principal balance as determined under section 74-607 (f) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of twenty dollars ($20) may be charged on any retail installment contract.

(c) When a retail installment contract provides for payment, other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (a) and (b) hereof, having due regard for the schedule of payments in the contract.

(d) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for, and the seller or holder may charge, collect and receive a finance charge, as specified herein, for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed one and one-half per cent (1 ½%) for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

(i) the average daily balance in the account in the billing cycle period; or

(ii) the median amount within a ten dollar ($10) range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(e) If the finance charge so determined pursuant to (d) above, for such monthly period is less than fifty cents (50¢), a maximum finance charge not in excess of fifty cents (50¢) may be charged, received and collected for such period."

Approved April 7, 1975.

CHAPTER NO. 253

AN ACT TO DELETE THE TOWNSHIP TERRITORIAL LIMITS ON CONSTABLES; TO REQUIRE THE BOARD OF COUNTY COMMISSIONERS TO SET SALARIES FOR CONSTABLES; TO MAKE CONSTABLES APPOINTED COUNTY OFFICERS; AMENDING SEC-

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TIONS 16-507, 16-2404, 16-2406, 16-3601, 16-3607, 16-4010, 66-205, 93-7709, R.C.M. 1947; REPEALING SECTION 25-309, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-507, R.C.M. 1947, is amended to read as follows:

"16-507. Officers of new county—judicial district. At the election provided for in section 16-505 of this code, there shall be chosen such county, township, and district officers as are now or may hereafter by general law be provided for in counties of the class to which the said new county is determined to belong, as herein provided; provided, that all duly elected, qualified and acting officers of the county or counties, who may reside within the proposed new county, shall be deemed to be officers of said new county if they file with the board of county commissioners, whose duty it shall be to call the election, within five days after the final hearing and determination of said petition for such proposed new county, their intention to become officers of said proposed new county, and the board of county commissioners issuing the proclamation of any election, as in this act provided, shall omit providing for the election of any such officers as may have filed their declaration as herein provided; and provided, also, that all duly elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as such justices of the peace in said county for the remainder of the term for which they were elected; provided, further, that all duly elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as hereinbefore in section 16-505 provided, shall hold office as school trustees in said new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as said districts are organized as provided by this act. Each person elected or appointed to fill an office of such new county under the provisions of this act shall qualify in the manner provided by law for such officers, except as herein otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided, after the receipt of the certificate of his election. Each of such officers may take the oath of office before any officers authorized by the laws of the state of Montana to administer oaths, and the bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes. The officers elected or appointed under the provisions of this act shall each perform the duties and receive the compensation now provided by general law for the office to which he has been appointed or elected in the counties of the class to which such new county shall have been determined to belong, as herein provided under the general classification of counties in this state.

Said new county, when created and organized in pursuance of the provisions of this act, shall be attached to such judicial district as may be designated by the governor of the state of Montana, in a proclamation to be issued by him, designating such new county as attached to the particular judicial district for judicial purposes."

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Section 2. Section 16-2404, R.C.M. 1947, is amended to read as follows:

"**16-2404. Township officers.** The officers of townships are as provided elsewhere in this code, or by the board of county commissioners."

Section 3. Section 16-2406, R.C.M. 1947, is amended to read as follows:

"**16-2406. County and other officers, when elected or appointed and term of office.** There may be elected or appointed in each county the following county officers who shall possess the qualifications for suffrage prescribed by the constitution of the state of Montana, and such other qualifications as may be prescribed by law:

One (1) county attorney; one (1) clerk of the district court; one (1) county clerk who shall be clerk of the board of county commissioners and ex officio recorder; one (1) sheriff; one (1) treasurer, who shall be collector of the taxes; one (1) county superintendent of schools; one (1) county surveyor; one (1) assessor; one (1) coroner; one (1) public administrator; and at least one (1) justice of the peace. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Persons appointed to the different offices serve at the pleasure of the commissioners.

The commissioners may appoint, at their discretion, constables, but not more than one (1) constable for each justice of the peace court.

County auditors, and all elective township officers, may be elected at each general election as now provided by law. The officers mentioned in this act must take office on the first Monday of January next succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election if elective, and if not elective, the appointee serves at the pleasure of the commissioners; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated with the exception of the office of the justice of the peace, which office may not be combined or consolidated with any other office other than another justice of the peace office; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid officers, or six (6) months prior to the appointment of aforesaid officers, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order."

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Section 4. Section 16-3601, R.C.M. 1947, is amended to read as follows:

"**16-3601. Constables to attend justices' courts.** Constables must attend the courts of justices of the peace within their *counties* whenever so required, and execute, serve, and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority."

Section 5. Section 16-3607, R.C.M. 1947, is amended to read as follows:

"**16-3607. Justice or constable purchasing judgment.** Every justice of the peace, or constable of the same *county*, who purchases or is interested in the purchase of any judgment, or part thereof, on the docket of, or on any docket in the possession of, such justice, is guilty of a misdemeanor."

Section 6. Section 16-4010, R.C.M. 1947, is amended to read as follows:

"**16-4010. Townships—how disposed of.** The townships of a county abandoned and abolished under this act shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county; provided that if a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county."

Section 7. Section 66-205, R.C.M. 1947, is amended to read as follows:

"**66-205. Auctioneers ex efficio.** In any *county* where there is no auctioneer, the sheriff or a constable thereof is ex officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex officio auctioneer he is liable on his official bond."

Section 8. Section 93-7709, R.C.M. 1947, is amended to read as follows:

"**93-7709. Special constables—appointment.** If in any *county* there should be no duly appointed or qualified constable, *the board of county commissioners* in the county may, at the request of a party, after being satisfied that it is expedient to do so, specially depute any proper person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant, or with or without a writ of attachment, or to serve an execution. The justice shall be liable upon his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process, and a note thereof made on the justice's docket."

Section 9. There is a new R.C.M. section numbered 25-312 that reads as follows:

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25-312. Compensation of constables. The board of county commissioners shall, by resolution on or before July 1 of each year, fix the salary of constables for the following fiscal year. Constables shall receive mileage, at the rate provided by law, when performing their official duties.

Section 10. Section 25-309, R.C.M. 1947, is repealed.

Section 11. This act is effective on its passage and approval.

Approved April 7, 1975.

CHAPTER NO. 254

AN ACT AMENDING FIRE EXTINGUISHER REQUIREMENTS; AMENDING SECTION 69-1807, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1807, R.C.M. 1947, is amended to read as follows:

"**69-1807. Fire extinguisher requirements.** *No* fire extinguisher or extinguishers containing any of the following liquids: Carbon tetrachloride (CCl4); Chlorobromomethane (CH2BrCl); Azeotropic chlormethane (CM-7); Dibromodifluoromethane (CBr2F2); 1, 2-Dibromo-2-chloro-1, 1, 2-trifluoroethane (CBrF2CBrC1f); 1, 2-Dibromo-2, 2-difluoroethane (CH2BrCBrF2); Methyl bromide (CH3Br); Ethylene dibromide (CH2BrCH2Br); 1, 2-Dibromotetrafluoroethane (CBrF2CBrF2); Hydrogen bromide (HBr); Methylene bromide (CH2Br2); Bromodifluoromethane (CHBrF2); and Dichlorodifluoromethane (CCl2F2), or any other toxic or poisonous vaporizing liquid, shall be kept or maintained in or upon any building *without* written *approval* by the state fire marshal or his deputy."

Approved April 7, 1975.

CHAPTER NO. 255

AN ACT TO AMEND SECTION 89-125, R.C.M. 1947, TO CLEARLY AUTHORIZE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ACQUIRE WATER FOR SALE, RENT, OR DISTRIBUTION FOR INDUSTRIAL USES FROM THE FORT PECK RESERVOIR AND AT SUCH RATES AND UNDER SUCH CONDITIONS AS IT PRESCRIBES; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-125, R.C.M. 1947, is amended to read as follows:

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"**89-125. Powers of department concerning waters and appropriations thereof.** (1) The authority of the department conferred by this act extends and applies to rights to the natural flow of the waters of this state which it may acquire, with the approval of the board, by condemnation, purchase, exchange, appropriation or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction, which purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it deems appropriate, and make findings of the date and quantity of appropriation and use of all claimants which the department will recognize and observe in diverting the waters which it owns. The department may police and distribute to the owner of the recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this act, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners, but the owner of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream, it may divert or authorize the diversion at any point on the stream, or any portion thereof, when it is done without injury to a prior appropriator.

(7) This act does not repeal or amend an existing statute pertaining to the appropriation or use of water except as expressly provided in this act, and this act does not interfere with vested rights to the use of water.

(8) In addition to the powers conferred on the department elsewhere in this chapter, the department may acquire water by purchase option or agreement with the federal government from the Fort Peck Reservoir for the purpose of sale, rent, or distribution for industrial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate."

Section 2. This act is effective upon its passage and approval.

Approved April 7, 1975.

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CHAPTER NO. 256

AN ACT TO AMEND SECTIONS 75-6516, 75-6517 AND 75-6525, R.C.M. 1947, TO RESTRICT THE TRANSFER OF LAND FROM ONE ELEMENTARY OR HIGH SCHOOL DISTRICT TO ANOTHER IN CERTAIN SITUATIONS UNLESS THE TAXABLE VALUE OF THE REMAINING PROPERTY IN THE SCHOOL DISTRICT FROM WHICH THE LAND IS TRANSFERRED IS NOT REDUCED BELOW ONE HUNDRED THOUSAND DOLLARS AND UNLESS APPROVED BY A VOTE OF THE PEOPLE IN THE SCHOOL DISTRICT FROM WHICH THE LAND IS TRANSFERRED WHEN DISPUTED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6516, R.C.M. 1947, is amended to read as follows:

"**75-6516. Transfer of territory from one elementary district to another.** A majority of the electors of any elementary district, who are qualified to vote under the provisions of section 75-6410 and who reside in territory which is a part of an elementary district, may petition the county superintendent to transfer such territory to another elementary district when:

(1) such territory is contiguous to the district to which it is to be attached;

(2) such territory is not located within three miles, over the shortest practical route, of an operating school of the district from which it is to be detached; and

(3) the transfer of such territory will not reduce the taxable value of the district to less than *one hundred thousand dollars ($100,000)* unless the remaining territory of the district will contain not less than fifty thousand (50,000) acres of nontaxable Indian land.

The petition shall be addressed to the county superintendent and shall describe the territory that is requested to be transferred and to what district it is to be transferred, state the reasons why such transfer is requested and state the number of elementary school-age children residing in such territory.

On receipt of a valid petition for a territory transfer, the county superintendent shall file such petition, set a hearing place, date, and time for consideration of the petition that is not more than forty (40) days after receipt of the petition and give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be transferred.

The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of the affected districts shall be heard. If the

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county superintendent shall deem it advisable and in the best interests of the residents of such territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders shall be final thirty (30) days after its date unless it is appealed to the board of county commissioners by a resident or taxpayer of either district affected by the territory transfer. The decision of the board of county commissioners, after a hearing on such matter and consideration of the material presented at the county superintendent's hearing, shall be final *thirty (30) days after its date unless a petition to submit the question to a vote of the people in the district from which the land is to be transferred, which has been signed by a majority of the electors of the district who reside in the territory to be transferred and who are qualified to vote in elections for that district under section 75-6410, R.C.M. 1947, is presented prior to that time. When a petition is submitted under this subsection, the question of whether the land shall be transferred to another district shall be put before the voters at the the next regular school election in the affected district.*

Whenever a petition to transfer territory from one elementary district to another elementary district would create a joint elementary district or affect the boundary of an existing joint elementary district, the petition shall be presented to the county superintendent of the county where the territory is located. Such county superintendent shall notify any other county superintendents of counties with districts affected by such petition and the duties prescribed in this section for the county superintendent and the board of county commissioners shall be performed jointly by such county officials."

Section 2. Section 75-6517, R.C.M. 1947, is amended to read as follows:

"**75-6517. Limitations for creation of new elementary district.** A new elementary district may be created out of the territory of an existing elementary district or districts when:

(1) the taxable value of the taxable property of the territory proposed to be included in such new district is seventy-five thousand dollars ($75,000) or more, except that when fifty thousand (50,000) acres or more of such new district are nontaxable Indian land, this limitation shall not be applicable;

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be *one hundred thousand dollars ($100,000)* or more after the territory is detached; and

(3) the ANB in any of the existing districts is not reduced to less than fifteen (15)."

Section 3. Section 75-6525, R.C.M. 1947, is amended to read as follows:

"**75-6525. Limitations for organization of joint high school district.** The boundaries of any high school district which encompass a county's portion of a joint elementary district where an elementary school

is operated may be changed to establish a joint high school district. Such high school district boundary change shall be a transfer of all the territory located in another county's portion of the same joint elementary district. No such boundary change shall be made when:

(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than *one million dollars ($1,000,000)*; or

(2) a portion of the territory to be transferred is less than three (3) miles from an operating, accredited high school located in another high school district."

Approved April 7, 1975.

CHAPTER NO. 257

AN ACT REQUIRING THE ATTORNEY GENERAL TO GIVE WRITTEN OPINIONS WITHIN THREE (3) MONTHS TO THE CITY ATTORNEY OF ANY CITY OR TOWN UPON ANY QUESTION OF LAW RELATING TO THE OFFICES OF SAID GOVERNING BODY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-401, R.C.M. 1947, is amended to read as follows:

"**82-401. General duties.** It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

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5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, *to the city attorney of any city or town,* and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices. *He shall give any such opinion within three (3) months following the date it is requested, unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time.*

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state, and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of examiners to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, board of state prison commissioners, and other duties prescribed by law.

12. To report to the governor, at the time prescribed by section 59-702 of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys, and to report to the governor as provided in section 59-705."

Approved April 7, 1975.

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CHAPTER NO. 258

AN ACT TO AMEND SECTION 84-6405, R.C.M. 1947, RELATING TO ASSESSMENT OF AIRLINE COMPANY PROPERTY; TO PROVIDE FOR A HEARING BEFORE THE DEPARTMENT OF REVENUE AND THE STATE TAX APPEAL BOARD.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-6405, R.C.M. 1947, is amended to read as follows:

"**84-6405. Appearance at department of revenue.** After such assessment is made the *department* shall give written notice thereof to the person or persons to whom the assessment is made. *Within thirty (30) days the* person or persons, or any taxpayer may appear before the *department* in person, or otherwise, to show cause why such assessment should be either lowered or raised."

Section 2. There is a new R.C.M. section numbered 84-6405.1 that reads as follows:

84-6405.1. Hearing before the state tax appeal board. Following the hearing before the department, any aggrieved party may appeal to the state tax appeal board according to the rules of that board.

Approved April 7, 1975.

CHAPTER NO. 259

AN ACT RELATING TO PARTICIPATION BY THE STATE IN FEDERAL ASSISTANCE PROGRAMS; PRESCRIBING THE DUTIES OF THE STATE BUDGET DIRECTOR REGARDING THESE PROGRAMS; PROVIDING PROCEDURES BY WHICH SUCH PROGRAMS MAY BE ACCEPTED BY THE STATE; PROVIDING FOR REPORTS ON THESE PROGRAMS; AND REPEALING SECTION 82-112, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 79-2701 that reads as follows:

79-2701. Short title. This act may be cited as the "Federal Assistance Management Act".

Section 2. There is a new R.C.M. section numbered 79-2702 that reads as follows:

79-2702. Purpose. The purpose of this act is to provide more complete information regarding federal assistance programs to the governor, state

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agencies, and the legislature, and coordinate federally assisted programs with other state programs.

Section 3. There is a new R.C.M. section numbered 79-2703 that reads as follows:

79-2703. Definitions. As used in this act:

(1) "State agency" means any agency of state government eligible to apply for and receive federal funds;

(2) "Federal assistance programs" means any financial assistance made to a state agency by an agency of the United States government, whether a grant, loan, gift, contract, or in any other form;

(3) "Application" means a written request to a federal agency for federal assistance program funds.

Section 4. There is a new R.C.M. section numbered 79-2704 that reads as follows:

79-2704. Federal assistance management — duties of budget director. The budget director shall:

(1) establish a central reporting and information service to keep the governor, state agencies, and the legislature informed about available federal assistance programs, pending federal assistance legislation, and current federal assistance programs in effect within the state;

(2) make studies of the administration and effect of federal assistance programs in the state and advise the governor and the legislature of alternative recommended methods and procedures for the administration of these programs;

(3) assist in the coordination of federal assistance programs that involve or are administered by more than one (1) state agency;

(4) analyze and advise on applications for new federal assistance programs submitted to the governor for approval; and

(5) report, as requested by the legislature or its committees, on the status and condition of federal assistance programs in the state.

Section 5. There is a new R.C.M. section numbered 79-2705 that reads as follows:

79-2705. Governor authorized to accept funds — designation of state agency. The governor is authorized to accept on behalf of the state any federal assistance funds made available by act of congress for programs that are consistent with the needs and goals of the state and its citizens and that are not prohibited by the provisions of this act or other applicable law. The governor shall designate, unless otherwise specified by state or federal law or regulation, the state agency to administer the accepted federal assistance program.

Section 6. There is a new R.C.M. section numbered 79-2706 that reads as follows:

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79-2706. Applications for funds by state agencies — approval. All applications made by state agencies for federal assistance program funds, with the exception of university system research grants, must be approved by the governor prior to their submission to the federal authorities. The form and procedure for submission for the governor's approval shall be determined by the budget director. Applications by constitutionally elected officials shall be subject only to review and comment by the governor.

Section 7. There is a new R.C.M. section numbered 79-2707 that reads as follows:

79-2707. Budget amendments. Approval of a state agency application under section 79-2706 shall not constitute authority to expend any federal assistance program funds subsequently granted. Financing for new or expanded programs from federal assistance program sources may be made available only by approved budget amendment as provided in appropriation acts.

Section 8. There is a new R.C.M. section numbered 79-2708 that reads as follows:

79-2708. Reports by participating state agencies. Any state agency that participates in any federal assistance program shall make such reports regarding it as the budget director may require.

Section 9. Section 82-112, R.C.M. 1947, is repealed.

Approved April 7, 1975.

CHAPTER NO. 260

AN ACT TO AMEND SECTION 94-6-204, R.C.M. 1947, DEFINING THE CRIME OF BURGLARY BY ADDING THE TERM "UNLAWFULLY" TO THE DEFINITION OF AGGRAVATED BURGLARY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-6-204, R.C.M. 1947, is amended to read as follows:

"**94-6-204. Burglary.** (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains *unlawfully* in an occupied structure with the purpose to commit a felony therein, and

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense, or

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in immediate flight thereafter he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed ten (10) years. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed forty (40) years."

Approved April 7, 1975.

CHAPTER NO. 261

AN ACT TO AMEND SECTION 94-6-104, R.C.M. 1947, TO CLARIFY THE TYPE OF PROPERTY WHICH MUST BE DAMAGED OR DESTROYED TO MAKE THE CRIMINAL ACT ARSON.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-6-104, R.C.M. 1947, is amended to read as follows:

"**94-6-104. Arson.** (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure *which is property* of another without consent; or

(b) places another person in danger of death or bodily injury.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed twenty (20) years."

Approved April 7, 1975.

CHAPTER NO. 262

AN ACT TO AMEND SECTIONS 84-2202, 84-2203, AND 84-2209, R.C.M. 1947, RELATING TO THE OIL PRODUCERS' LICENSE TAX.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-2202, R.C.M. 1947, is amended to read as follows:

"**84-2202. Oil producers' license tax — amount — exceptions.** Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchant-

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able or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state *department of revenue,* for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) Two and one-tenth per cent (2.1%) of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) Two and sixty-five hundredths per cent (2.65%) of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil; in all leases establishing royalty interests entered into hereafter or in renewals of existing leases, or in division of proceeds orders, or by other contracts, such other owner or owners may agree with every person required to pay such tax that such other owner or owners will pay their prorata share of said tax,

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and that said prorata share may be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 2. Section 84-2203, R.C.M. 1947, is amended to read as follows:

"**84-2203. Payment of tax.** Such license tax shall be paid in quarterly installments for the quarterly periods ending respectively March 31, June 30, September 30 and December 31, of each year, and the amount of the license tax for each quarterly period shall be paid to the state department of revenue within *sixty (60)* days after the end of each quarterly period."

Section 3. Section 84-2209, R.C.M. 1947, is amended to read as follows:

"**84-2209. Procedure to compute tax in absence of statement — penalty — interest.** If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall add to the amount of such license taxes a penalty of *ten* per cent *(10%)* thereof, *plus interest at the rate of one percent (1%) per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment. The state department of revenue shall mail to the person required to file a quarterly statement and pay any license tax, a letter setting forth the amount of license tax, penalty, and interest due and the letter shall further contain a statement that if payment is not made within such time a lien may be filed as set forth in 84-2209.1. Upon receipt of said letter the person shall remit to the department of revenue the full amount of license tax, penalty and interest due within fifteen (15) days.* The *ten* per cent *(10%)* penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-2207 is provided to the said department."

Section 4. There is a new R.C.M. section numbered 84-2209.1 that reads as follows:

84-2209.1. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person upon the filing of the state department of revenue of the duplicate of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk in the county where such real property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed and recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Approved April 7, 1975.

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CHAPTER NO. 263

AN ACT TO GENERALLY REVISE AND REPEAL STATUTES ON WILLS, SUCCESSION, PROBATE, AND GUARDIANSHIP TO CONFORM MONTANA LAW TO THE UNIFORM PROBATE CODE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-233, R.C.M. 1947, is amended to read as follows:

"**25-233. Fees of clerk in probate proceedings.** At the time of filing *an application for informal probate or appointment, a petition for formal probate or appointment, a petition for appointment of a guardian of a minor or acceptance of such appointment, a petition for appointment of a guardian of an incapacitated person or acceptance of such appointment, a petition for appointment of a conservator of the estate of a protected person or acceptance of such appointment, the clerk shall collect from the petitioner or person accepting such appointment* the sum of ten dollars ($10).

For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of ten dollars ($10).

If a will is contested, the contestant must pay to the clerk, on filing his grounds of opposition, the sum of ten dollars ($10).

And on the entry of judgment thereon, the prevailing party must pay the sum of five dollars ($5).

On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of ten dollars ($10).

On entry of judgment thereon, the prevailing party must pay the sum of five dollars ($5).

One-quarter (¼) of all fees collected by said clerk of the district court must be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund."

Section 2. Section 25-237, R.C.M. 1947, is amended to read as follows:

"**25-237. Fees of public administrator.** The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed *personal representatives*, as provided in section *91A-3-719*."

Section 3. Section 45-603, R.C.M. 1947, is amended to read as follows:

"**45-603. Priority of wages in case of death of employer.** In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, and laborer for services rendered within four (4) months next preceding the death of the employer, in the amount actually

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owed, *are preferred debts under section 91A-3-805(1)(e)* and must be paid before other claims against the estate of the deceased person."

Section 4. Section 91-602, R.C.M. 1947, is amended to read as follows:

"**91-602. Must procure letters of administration — bond and oath.** Whenever a public administrator takes charge of an estate, under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of *a personal representative's* bond and oath, but when real estate is ordered to be sold, another bond *may* be required by the court."

Section 5. Section 91-614, R.C.M. 1947, is amended to read as follows:

"**91-614. When to settle with clerk of district court.** The public administrator is required to account and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court, on the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed."

Section 6. Section 91-628, R.C.M. 1947, is amended to read as follows:

"**91-628. Compensation of public administrator.** The public administrator shall receive as full compensation for his services, including attorney's fees, *the amounts provided for in sections 91A-3-719 and 91A-3-720*; provided, that in no case shall the compensation be less than twenty-five dollars ($25)."

Section 7. Section 91-629, R.C.M. 1947, is amended to read as follows:

"**91-629. Retiring public administrator may close pending estates.** The public administrator, upon the expiration or termination of his term of office, may continue to administer estates not closed by filing and presenting to the court, a full and complete account pertaining to each estate not closed, securing an order of court granting him letters of administration and qualifying himself as a *personal representative*."

Section 8. Section 91-631, R.C.M. 1947, is amended to read as follows:

"**91-631. Adjustment of compensation.** Thereupon the court shall determine and allow such predecessor in office, for his services rendered in connection with estates not closed, a compensation based upon the commission prescribed and allowed by law, in proportion to the services necessarily rendered and those necessary to be rendered by such successor in closing up such estates. Such successor shall thereupon be allowed and paid the balance of such commission allowed."

Section 9. Section 91-2706, R.C.M. 1947, is amended to read as follows:

"**91-2706. Judge may present claim, and action thereon.** Any judge of the district court may present a claim against the estate of a decedent for allowance to the *personal representative* thereof, and in case of its rejection the *personal representative* has the same right to *petition or* sue in a proper court for its recovery as other persons have when their claims against an estate are rejected."

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Section 10. Section 91-2725, R.C.M. 1947, is amended to read as follows:

"**91-2725. Payment of debt to stop running of interest.** If there be any debt of the decedent bearing interest, whether presented or not, the *personal representative* may pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid."

Section 11. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"**91-4414. Exemptions from first $25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1) Transfers totally exempt. All property transferred to the state or any of its institutions, or to municipal corporations within the state for strictly county, city, town, or municipal purposes, shall be exempt. All property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, shall be exempt, if any of the following conditions is present:

(a) The society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(b) The property transferred is limited for use within this state;

(c) In the event that the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death any one of the following conditions existed:

(i) The other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(ii) The laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing

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under the laws of another state of the United States or foreign state or country;

(iii) The society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(2) $25,000; $5,000; $2,000 exempt, when. Property of the clear value of twenty-five thousand dollars ($25,000), transferred to the wife or to the husband of the decedent, five thousand dollars ($5,000) transferred to each minor lineal issue of the decedent, or any minor child adopted as such in conformity with law, or any minor child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of such adopted or mutually acknowledged child, and two thousand dollars ($2,000) transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in the first subdivision of section 91-4409 shall be exempt. Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to any property which shall thereafter be transferred by or from such husband or wife to any such child, provided the husband or wife does not survive said decedent to exceed ten years.

(3) $500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 12. Section 93-2504, R.C.M. 1947, is amended to read as follows:

"**93-2504. Seizin within five years — when necessary in actions for real property.** No action for the recovery of real property, or for the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action."

Section 13. Section 93-2604, R.C.M. 1947, is amended to read as follows:

"**93-2604. Within five years.** Within five years:

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1. An action upon a contract, account, promise, not founded on an instrument in writing.

2. An action upon a judgment or decree rendered in a court not of record. The cause of action is deemed, in such case, to have accrued when final judgment was rendered."

Section 14. Section 93-1401-3, R.C.M. 1947, is amended to read as follows:

"**93-1401-3. Will to be in writing.** A last will and testament is invalid unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given."

Section 15. Sections 33-129, 84-4110, 91-103, 91-104, 91-109, 91-117 through 91-121, 91-123, 91-131, 91-132, 91-134, 91-202, 91-225, 91-302, 91-305, 91-306, 91-310, 91-315, 91-316, 91-320, 91-401, 91-422, 91-623 through 91-627, 91-812, 91-1201, 91-1202, 91-1205 through 91-1207, 91-1304, 91-2205, 91-2714, 91-2722, 91-3206, 91-3208, 91-3401, 91-3501 through 91-3519, 91-3609 through 91-3611, 91-4519, 91-4520, 91-4526, 91-4605, 91-4609, 91-4905, 91-5008 through 91-5016, 91-5201, 91-5204, 91-5205, 91-5211, 93-1401-4, and 93-6352 through 93-6354 are repealed.

Approved April 7, 1975.

CHAPTER NO. 264

AN ACT TO PROVIDE THAT FUNDS PAID BY THE STATE AUDITOR TO ALL CITIES FOR FIREMEN'S RELIEF ASSOCIATIONS BE BASED ON ASSESSED VALUATION OF THE CITY RATHER THAN ON PREMIUMS COLLECTED IN THE CITY AND INCREASING THE PERCENTAGE OF ASSESSED VALUATION TO FORTY-FIVE ONE HUNDREDTHS MILLS; AMENDING SECTIONS 11-1919 AND 11-2030; AND REPEALING SECTION 11-1918, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1919, R.C.M. 1947, is amended to read as follows:

"**11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.** *(1)* At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to

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the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

(2) In the event of a disaster resulting in the death or injury sufficient to draw pension of ten percent (10%) of the active force and when the fund of such fire department relief association after receiving all moneys as designated in section 11-1911 and section 11-1912 and the ten percent (10%) of annual compensation as designated in this *chapter* does not show at least the one (1) mill growth as referred to in section 11-1912 then the treasurer of such relief association shall request and the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every city or town entitled to receive the same, out of the license fees collected by him, an additional amount to show at least the one (1) mill growth referred to in section 11-1912.

(3) In the event a city of the *first or* second class is not entitled to receive a sum equal to *forty-five* one hundredths *(45/100)* mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

(4) At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, except cities or towns of the first or second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to *forty-five one hundredths (45/100) mills of the total assessed valuation of the city or town to be paid from premium taxes,* after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection *(6)* of this section, as said cities or towns are each severally entitled to.

(5) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to *subsection (4)* above is insufficient to make an amount equal to one hundred dollars ($100) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection *(6)* of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars ($100).

(6) The risks referred to in subsection *(4)* above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or

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damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle."

Section 2. Section 11-2030, R.C.M. 1947, is amended to read as follows:

"**11-2030. Fire insurance premium tax to be paid into fund.** The state auditor and ex officio commissioner of insurance of the state of Montana shall annually deposit in the earmarked revenue fund, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for the payment of claims and administrative costs as provided in *sections* 11-2025 and 11-2026."

Section 3. Section 11-1918, R.C.M. 1947, is repealed.

Approved April 7, 1975.

CHAPTER NO. 265

AN ACT VALIDATING, RATIFYING, APPROVING AND CONFIRMING BONDS AND OTHER INSTRUMENTS OR OBLIGATIONS, HERETOFORE ISSUED BY PUBLIC BODIES OF THIS STATE, AND ALL PROCEEDINGS HERETOFORE TAKEN BY SUCH PUBLIC BODIES, TO AUTHORIZE AND ISSUE SUCH BONDS, INSTRUMENTS, AND OTHER OBLIGATIONS, HOWEVER DESCRIBED, AND PROVIDING THAT THIS ACT MAY BE CITED AS "THE 1975 BOND VALIDATING ACT"; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 79-2001 that reads as follows:

79-2001. Short title. This act may be cited as "The 1975 Bond Validating Act".

Section 2. There is a new R.C.M. section numbered 79-2002 that reads as follows:

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings: (1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include

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the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

Section 3. There is a new R.C.M. section numbered 79-2003 that reads as follows:

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

Section 4. There is a new R.C.M. section numbered 79-2004 that reads as follows:

79-2004. Act does not apply to pending actions. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1975, in which the validity of any such proceedings or of any such bonds is at issue.

Approved April 7, 1975.

CHAPTER NO. 266

AN ACT TO PROTECT THE RIGHTS AND INDEPENDENCE OF BLIND PERSONS; AMENDING SECTIONS 71-1305, 71-1306, AND 71-1307, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1305, R.C.M. 1947, is amended to read as follows:

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"**71-1305. Use of white or metallic-colored canes restricted to blind — right to use of public ways — right of equal accommodations — access of blind to highways, public accommodations, common carriers.** *(1)* No person, except those wholly or partially blind, shall carry or use on any street, highway or in any other public place, a cane or walking stick which is white *or metallic* in color, or white *or metallic* tipped with red.

(2) The blind and the visually handicapped have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(3) The blind and the visually handicapped are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons."

Section 2. Section 71-1306, R.C.M. 1947, is amended to read as follows:

"**71-1306. Right of blind person to be accompanied by guide dog in public places and in housing accommodations.** *(1)* Every totally or partially blind person shall have the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places where the public are invited—hotels, motels, public conveyances, public eating places, and places of amusement—without being charged extra for the guide dog; provided that he shall be liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind person who has a guide dog, or who obtains a guide dog, shall be entitled to full and equal access to all housing accommodations as provided in sections 64-306(3) and 71-1310, R.C.M. 1947, and he shall not be required to pay extra compensation for such guide dog but shall be liable for any damage done to the premises by such a guide dog."

Section 3. Section 71-1307, R.C.M. 1947, is amended to read as follows:

"**71-1307. Duty of pedestrian or driver approaching blind person.** Any pedestrian who is not wholly or partially blind, or any driver of a vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick predominately white or metallic in color or white tipped with red or being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of said blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to the person wholly or partially blind. *Any driver or pedestrian who fails to take such precautions shall be liable in damages for any injury caused such pedestrian; provided that a totally or partially blind*

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pedestrian not carrying such a cane or using a guide dog in any of the places, accommodations, or conveyances listed in section 71-1305 shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a guide dog in any such places, accommodations, or conveyances shall not be held to constitute nor be evidence of contributory negligence."

Section 4. There is a new R.C.M. section numbered 71-1308 that reads as follows:

71-1308. Penalty for violation. Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 71-1305, or otherwise interferes with the rights of a totally or partially blind or otherwise disabled person under section 71-1305, is guilty of a misdemeanor.

Section 5. There is a new R.C.M. section numbered 71-1305.1 that reads as follows:

71-1305.1. Access to housing accommodations. (1) Blind persons and visually handicapped persons shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(2) "Housing accommodations" means any real property, or portion thereof, which is used or occupied or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall not include any accommodations included within subsection (1) or any single family residence the occupants of which rent, lease, or furnish for compensation not more than one (1) room therein.

(3) Nothing in this section shall require any person renting, leasing, or providing for compensation real property to modify his property in any way or provide a higher degree of care for a blind person or a visually handicapped person than for a person who is not so disabled.

Approved April 7, 1975.

CHAPTER NO. 267

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF BUSINESS REGULATION OVER MILK TRANSPORTATION RATES; AMENDING SECTION 27-405, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-405, R.C.M. 1947, is amended to read as follows:

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"27-405. **General powers of the milk control board.** (1) The board is hereby vested with the powers, and it shall be its duty to supervise, regulate and control the milk industry of the state of Montana, including the production, transportation, *including transportation rates which distributors, contract haulers, and others charge producers,* processing, storage, distribution and sale of milk in the state of Montana for consumption within the state, providing however, that nothing contained in this act shall be construed to abrogate or affect the status, force or operation of any provision of public health laws or the law under which the Montana livestock sanitary board is constituted together with the Montana livestock sanitary board regulations or county board of health regulations, or municipal ordinances for the promotion or protection of the public health, but the board shall have the power to co-operate with the state board of health, the Montana livestock sanitary board or any county or city board of health or the state department of agriculture and industry in enforcing the provisions of this act.

(2) The board shall have the power and it shall be its duty to investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in the state of Montana and to conduct hearings upon any subject pertinent to the administration of this act. The board shall have the power to subpoena milk dealers, their records, books and accounts, and any other person from whom information may be desired or deemed necessary to carry out the purposes and intent of this act, and may issue commissions to take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the milk control board at its offices in the state capitol, provided at least ten (10) days notice is given to the proposed witness.

(3) It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be charged against the funds provided for the operation of the milk control board.

(4) Any duly designated agent of the board may administer oath to witnesses, may call and give notice of price hearings when the board is not in session and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail,

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postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned, subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides and said court shall order compliance with said subpoena, summons or citation and upon failure of the witness to attend, to testify, or to produce such books or papers or records as the board may have commanded, such witness may be punished for contempt of court as for failure to obey a subpoena issued by or to testify in a case pending before said court.

(5) The board may act as mediator or arbitrator to settle any controversy or issue pertaining to milk among or between producers, distributors, producer-distributors and/or consumers.

The operation and effect of any provisions of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act."

Section 2. There is a new R.C.M. section numbered 82A-406.1 that reads as follows:

82A-406.1. Intent of act. It is the intent of this act to place jurisdiction over milk hauling rates from producer to plant in the department of business regulation and jurisdiction over such rates among plants in the board of milk control.

Section 3. This act is effective on its passage and approval.

Approved April 7, 1975.

CHAPTER NO. 268

AN ACT TO AMEND SECTIONS 66-2602.1 AND 66-2609, R.C.M. 1947, TO PROVIDE THAT THE DEFINITION OF A WATER WELL CONTRACTOR OR CONTRACTOR SHALL MEAN ONLY A NATURAL PERSON AND SHALL NOT INCLUDE A FIRM, COPARTNERSHIP, ASSOCIATION OR CORPORATION, TO PROVIDE THAT OTHER SECURITIES MAY BE ACCEPTED IN LIEU OF SURETY BOND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2602.1, R.C.M. 1947, is amended to read as follows:

"**66-2602.1. Definitions.** Unless the context requires otherwise, in this act:

(1) "Board" means the board of water well contractors, provided for in section 82A-1602.26.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include excavations by backhoe, or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is twenty-five (25) feet or less, or spring development, and the term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil or natural gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a *natural* person, who constructs a water well on lands other than his own, for compensation. *Any firm, corporation or partnership may engage in the business of constructing water wells provided a licensed contractor herein is placed in charge of all water well construction.*"

Section 2. Section 66-2609, R.C.M. 1947, is amended to read as follows:

"**66-2609. Bond to be required.** The department, on issuance of a license under this act shall *require,* before the person commences operations in this state a good and sufficient surety bond, *or in lieu thereof its equivalent in a certificate of deposit, cashiers check, bank draft or certified check,* to be approved by the board, in the penal sum of one thousand dollars ($1,000), conditioned that the licensee will comply with the rules of the board and reasonable requirements made by the board in connection with the drilling of an individual well."

Approved April 7, 1975.

CHAPTER NO. 269

AN ACT AMENDING SECTION 66-2812, R.C.M. 1947, TO CLARIFY THE EXEMPTIONS TO COVERAGE OF THE ACT PERTAINING TO REGULARLY EMPLOYED MAINTENANCE ELECTRICIANS AND INDIVIDUALS DOING ELECTRICAL WORK ON THEIR OWN PROPERTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2812, R.C.M. 1947, is amended to read as follows:

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"**66-2812. Exemptions.** *(1)* Nothing in this *chapter* shall be deemed to apply to the installation, alteration or repair of electrical signal or communications equipment owned or operated by a public utility or a city. The licensing or inspection provisions of this act *do* not apply to regularly employed maintenance electricians *doing maintenance work* on the *business* premises of their employer *nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.*

(2) Nothing in *this chapter* shall be construed to require *an* individual to hold a license *while or for* doing electrical work on his own property or residence, provided that said property or residence is maintained for his own use.

(3) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction, control, *and supervision* of a licensed master electrician.

(4) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(5) No provisions of this *chapter* shall in any manner interfere with, hamper, preclude or prohibit any vendor of any electrical appliance, from selling, delivering and connecting any electrical appliance, if the connection does not necessitate the installation of electrical wiring of the structure where *the* appliance is *to be* connected."

Approved April 7, 1975.

CHAPTER NO. 270

AN ACT AMENDING SECTIONS 70-806 AND 70-821, R.C.M. 1947, PROVIDING THAT ALL FEES, FINES, AND PENALTIES PAID UNDER THE MONTANA UTILITY SITING ACT OF 1973 BE DEPOSITED IN THE EARMARKED REVENUE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-806, R.C.M. 1947, is amended to read as follows:

"**70-806. Application for certification — filing and contents — fees — use of filing fees — proof of service on municipalities — waiver of time requirement.** (1) At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803 (3) (a), 70-803 (3) (b) (iv), 70-803 (3) (c), and 70-803 (3) (d) and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 70-803 (3) (b) (iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information:

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(a) a description of the location and of the utility facility to be built thereon;

(b) a summary of any studies which have been made of the environmental impact of the facility;

(c) a statement explaining the need for the facility;

(d) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(e) such other information as the applicant may consider relevant or as the department may by regulation or order require. A copy or copies of the studies referred to in clause (b) above shall be filed with the department, if ordered, and shall be available for public inspection.

(2) A filing fee shall be deposited in the *earmarked revenue* fund *for the use of the department in administering this chapter.* Said fee shall be based upon the estimated cost of the facility according to the declining scale which follows. The applicant shall pay the accumulated sums calculated as follows: three percent (3%) of any estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars ($20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-tenth of one percent (0.1%) of any amount of estimated cost over three hundred million dollars ($300,000,000). *It is the intent of the legislature that the revenues derived from the filing fee be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this chapter.*

(3) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in such newspapers as will serve substantially to inform such persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in

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the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of a certificate shall be in such form and contain such information as the department shall prescribe. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section.

(7) The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immediate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section.

(8) The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R.C.M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R.C.M. 1947, that such relocation will not significantly affect the environment."

Section 2. Section 70-821, R.C.M. 1947, is amended to read as follows:

"70-821. Penalties for violation of act — civil action by attorney general. (1) Whoever

(a) without first obtaining a certificate of site and facility required under section 4 [70-804], commences to construct or operate a utility facility after the effective date of this act; or

(b) having first obtained a certificate of site and facility, constructs, operates or maintains a utility facility other than in compliance with the certificate; or

(c) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars ($10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars ($10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce the act or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

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(4) All fines *and penalties* collected shall be deposited in the *earmarked revenue* fund *for the use of the department in administering this chapter.*"

Section 3. There is a new R.C.M. section numbered 70-824 that reads as follows:

70-824. Earmarked revenue fund. All fees, taxes, fines, and penalties collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.

Approved April 7, 1975.

CHAPTER NO. 271

AN ACT AMENDING SECTION 93-212, R.C.M. 1947, TO PROVIDE THAT THE MEMBERS OF THE SUPREME COURT SHALL SIGN ALL DECISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-212, R.C.M. 1947, is amended to read as follows:

"**93-212. Decisions to be in writing.** In the determination of causes, all decisions of the supreme court must be given in writing, and the grounds of the decision must be stated, *and each justice agreeing or concurring with the decision must so indicate by signing the decision. Any justice disagreeing with a decision must so indicate by written dissent.*"

Approved April 7, 1975.

CHAPTER NO. 272

AN ACT PROVIDING INTERPRETERS FOR DEAF PERSONS IN LEGAL PROCEEDINGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-514 that reads as follows:

93-514. Deaf persons — court appointed interpreters. Whenever any deaf person is a party to any legal proceeding of any nature, or a witness therein, the court in all instances shall appoint a qualified interpreter of the deaf sign-language capable of communicating with the deaf person to interpret the proceedings to and the testimony of such deaf

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person. The court shall determine a reasonable fee for all such interpreter services which shall be paid out of general county funds.

Approved April 7, 1975.

CHAPTER NO. 273

AN ACT TO AMEND SECTIONS 69-4509 AND 69-4519, R.C.M. 1947, BY DECLARING EACH DAY OF VIOLATION A SEPARATE OFFENSE, PERMITTING INJUNCTIVE ACTION; AND CREATING A NEW SECTION PROVIDING FOR COUNTY ATTORNEY TO SERVE AS LEGAL ADVISOR FOR LOCAL BOARDS OF HEALTH.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-4508.1 that reads as follows:

69-4508.1. Legal advisor. The county attorney shall serve as legal advisor to local boards as established by sections 69-4504 and 69-4506, R.C.M. 1947. The county attorney shall represent the local board in those matters relating to the functions, powers and duties of local boards.

Section 2. Section 69-4509, R.C.M. 1947, is amended to read as follows:

"69-4509. Functions, powers and duties of local boards of health. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the department and fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth which cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things which are infected with communicable diseases;

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(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places which are infected with communicable diseases;

(e) require and provide means for disinfecting places which are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all, or a part of, local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety *or bring action necessary to restrain the violation of public health laws or rules*;

(j) adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system. Fees shall be deposited with the county treasurer;

(k) adopt rules, which do not conflict with rules adopted by the department:

(i) for the control of communicable diseases,

(ii) for the removal of filth which might cause disease or adversely affect public health,

(iii) on sanitation in public buildings which affects public health,

(iv) for heating, ventilation, water supply and waste disposal in public accommodations which might endanger human lives."

Section 3. Section 69-4519, R.C.M. 1947, is amended to read as follows:

"**69-4519. Penalty.** (1) If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

(2) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than ten dollars ($10) nor more than fifty dollars ($50).

(3) Except as provided in subsections (1) and (2) of this section, a person who violates the provisions of this chapter, or rules adopted by the department under the provisions of this chapter, is guilty of a misdemeanor. On conviction, he shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500), imprisoned for not more than ninety (90) days, or both.

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(4) Each day of violation constitutes a separate offense. Fines shall be paid to the county treasurer of the county in which the violation occurs."

Approved April 7, 1975.

CHAPTER NO. 274

AN ACT AMENDING SECTION 4-170, R.C.M. 1947, RELATING TO CANVASSING FOR SALES OF LIQUOR OR BEER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-170, R.C.M. 1947, is amended to read as follows:

"**4-170. Unlawful to canvass for orders for sale or purchase of liquor — advertising liquor or beer, when prohibited — exceptions.** No person within the state shall—

(1) canvass for, receive, take or solicit orders for the purchase or sale of any spirits or wines or act as agent or intermediary for the sale or purchase of any spirits or wines or hold out himself as such agent or intermediary, *unless permitted to do so under regulations that shall be promulgated by the department of revenue to govern such activities*;

(2) canvass for or solicit orders for the purchase or sale of any beer or malt liquor excepting in the case of beer proposed to be sold to beer licensees, club licensees duly authorized to sell beer under the provisions of this act;

(3) exhibit, publish, or display, or permit to be exhibited, published or displayed, any form of advertisement, or any other announcement, publication or price list of or concerning liquor or where or from whom the same may be had, obtained or purchased, unless permitted so to do by the regulations of the department of revenue, and then only in accordance with such regulations;

(4) This section shall not apply—

(a) to the department of revenue, nor to any act of the department, nor to any state liquor store; nor

(b) to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of his employment as such agent, operator or employee."

Approved April 7, 1975.

CHAPTER NO. 275

AN ACT TO INCREASE THE INCENTIVE PAY TO INMATES AND TO

ALLOW SUCH PAY TO COME FROM AN ACCOUNT OTHER THAN THE GENERAL FUND; AMENDING SECTION 80-1501, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1501, R.C.M. 1947, is amended to read as follows:

"**80-1501. Industrial activities permitted at institutions — powers of department — incentive pay to inmates.** The department of institutions may:

(1) Establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions;

(2) Print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(3) Fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(4) Require institutions to purchase needed goods from other institutions;

(5) Provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(6) Provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(7) Provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(8) In case of emergency, and with the approval of the department, sell agricultural products and livestock on the open market. Receipts from these sales shall be deposited in *a revolving accounting entity;*

(9) Provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions;

(10) Pay an inmate of the state prison an amount not exceeding *one dollar ($1)* per day as an incentive for the performance of work, based on the following criteria:

(a) Knowledge and skill

(b) Attitude toward authority

(c) Physical effort

(d) Responsibility for equipment and materials

(e) Regard for safety of others. All these wages shall be paid from

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receipts from the sale of goods produced or manufactured at the institution where the resident resides, *or from the program that the inmate was working in.*"

Approved April 7, 1975.

CHAPTER NO. 276

AN ACT TO ALLOW FOR THE DEDUCTION OF INMATES' WAGES FOR CERTAIN PURPOSES; AMENDING SECTION 80-1906, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1906, R.C.M. 1947, is amended to read as follows:

"**80-1906. Clothing and money furnished on discharge or parole.** The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state shall receive five dollars *($5)*; all other discharged or paroled inmates shall receive an amount not exceeding twenty-five dollars *($25). However, the department may establish rules which allow it to deduct up to one-fourth (¼) of an inmate's wages earned under section 80-1501 and hold that money in a special account to be disbursed to the inmate when he is discharged or paroled.*"

Approved April 7, 1975.

CHAPTER NO. 277

AN ACT TO AMEND SECTION 16-4307, R.C.M. 1947, TO AUTHORIZE HOSPITAL DISTRICTS TO CHOOSE THE NUMBER OF TRUSTEES BY SETTING THE NUMBER OF TRUSTEES IN THE DISTRICTS BYLAWS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4307, R.C.M. 1947, is amended to read as follows:

"**16-4307. Government of district — appointment, election and terms of trustees.** Said hospital district shall be governed and managed by a board of three (3) *or five (5)* trustees, elected by the registered electors residing in the district. *The number of trustees on the board and, if the number is set at five (5), the initial terms of two (2) trustees, shall be fixed by the bylaws of the district.* The trustees must be elected from among

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the registered electors qualified to vote at general elections within said district. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. The trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1), two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there may be elected a trustee to serve for a term of three (3) years and until his successor shall be qualified and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. If there is no nomination petition filed it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected. The trustees at their first meeting shall adopt bylaws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees."

Section 2. **Effective date.** This act will become effective upon passage and approval.

Approved April 7, 1975.

CHAPTER NO. 278

AN ACT AMENDING SECTION 92-703.1, R.C.M. 1947, RELATING TO PAYMENTS FOR PARTIAL DISABILITY BY MAKING THE TEST FOR PARTIAL DISABILITY PAYMENTS ACTUAL IMPAIRMENT OF EARNING CAPACITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-703.1, R.C.M. 1947, is amended to read as follows:

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"**92-703.1. Compensation for injuries causing partial disability.** Weekly compensation benefits for injury producing partial disability shall be sixty-six and two-thirds percent (66 ⅔%) of the *actual diminution in the worker's earning capacity measured in dollars,* subject to a maximum compensation of sixty dollars ($60) a week.

The compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of partial disability; provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of the member."

Approved April 7, 1975.

CHAPTER NO. 279

AN ACT TO GENERALLY REVISE AND UPDATE COMMERCIAL FERTILIZER LAWS, MODIFYING AND ADDING DEFINITIONS, CHANGING LICENSING REQUIREMENTS, RAISING FERTILIZER INSPECTION FEES, ESTABLISHING INSPECTION FEES FOR SOIL AMENDMENTS, ALTERING THE TONNAGE REPORTING SYSTEM, ESTABLISHING AN EFFECTIVE DATE; AMENDING SECTIONS 3-1714.1, 3-1718, 3-1722, 3-1724, 3-1727, AND 3-1728, R.C.M. 1947, AND REPEALING SECTIONS 3-1714, 3-1715, 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, AND 3-1726, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 3-1714.2 that reads as follows:

3-1714.2. Definitions. As used in this chapter:

(1) "Commercial fertilizer" includes any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, yield or quality of the crop.

(a) "Fertilizer materials" is a commercial fertilizer which either:

(i) contains important quantities of not more than one of the primary plant nutrients (nitrogen, phosphoric acid and potash), or

(ii) has approximately eighty-five percent (85%) of its plant nutrient content present in the form of a single chemical compound, or

(iii) is derived from a plant or animal residue or by-product or a natural material deposit which has been processed in such a way that its content of primary plant nutrients has not been materially changed except by purification and concentration.

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(b) "Mixed fertilizers" is a commercial fertilizer (dry or liquid) containing any combination or mixture of fertilizer materials.

(c) "Specialty fertilizer" is a commercial fertilizer (dry or liquid) distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries and includes commercial fertilizers used for research or experimental purposes.

(d) "Bulk fertilizer" is commercial fertilizer (dry or liquid) distributed in nonpackage form, or in containers of greater than one thousand (1000) pounds.

(e) "Packaged fertilizer" is commercial fertilizer (dry or liquid) distributed in sealed containers of one thousand (1000) pounds or less.

(2) "Brand" means a term, design, or trademark used in connection with one (1) or several grades of commercial fertilizer.

(3) "Grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis. Provided, however, that fertilizer materials, bone meal, manures and similar raw materials may be guaranteed in fractional units.

(4) "Official sample" means any sample of commercial fertilizer taken by the department of agriculture and so designated by the department.

(5) "Ton" means a net weight of two thousand (2000) pounds avoirdupois.

(6) "Percent or percentage" means the percentage by weight.

(7) "Person" means an individual, partnership, association, firm, or corporation.

(8) "Distribute" means to offer for sale, sell, barter, or otherwise supply commercial fertilizers.

(9) "Distributor" means any person who distributes.

(10) "Registrant" means the person who registers commercial fertilizer and/or soil amendment.

(11) "Manipulated manures" means substances composed primarily of excreta, plant remains, or mixtures of such substances which have been processed in any manner, including the addition of plant nutrients, drying, grinding and other means.

(12) "Soil amendment" means any material not included under commercial fertilizer, or those products subject to the Federal Insecticide, Fungicide or Rodenticide Act as amended, which is added to soil or to plants for purposes of influencing the growth, yield or quality of the crop, soil flora or fauna or other soil characteristics.

(13) "Licensee" means any person who has obtained a license from the

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department so he may legally distribute commercial fertilizer other than specialty fertilizers or soil amendment in this state.

Section 2. Section 3-1714.1, R.C.M. 1947, is renumbered 3-1714.3, and is amended to read as follows:

"**3-1714.3. Guaranteed analysis.** (1) Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(a) Total nitrogen (N) ----------percent
Available phosphoric acid (P2O5) ----------percent
Soluble potash (K2O) ----------percent

(b) For unacidulated mineral phosphatic materials and basic slag, bone *meal*, tankage, and other organic phosphatic materials, *the total phosphoric acid and/or degree of fineness may also be guaranteed.*

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients shall be expressed in the form of the element. The sources of other nutrients including, but not limited to, oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department. When any plant nutrients or other substances or compounds are guaranteed, they are subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718.

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of one hundred (100) pounds per ton, when required by regulation.

(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:

Total nitrogen (N) ----------percent
Available phosphorus (P) ----------percent
Soluble potassium (K) ----------percent

(3) The effective date of the rule may not be less than six (6) months following the adoption of the rule. For a period of two (2) years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.

(4) Soil amendments shall guarantee the minimum quantity of each active ingredient in terms approved by the department or in terms as set forth in rules issued by the department. They shall also meet any other requirements established by rule by the department."

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Section 3. There is a new R.C.M. section numbered 3-1715.1 that reads as follows:

3-1715.1. Registration and licenses. (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures, shall be registered by the manufacturer before distribution in this state. The application for registration shall be submitted to the department on a form furnished or approved by the department and shall be accompanied by a fee of ten dollars ($10) per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers in packages of ten (10) pounds or less which shall be registered at a fee of twenty-five dollars ($25) each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year. The application for registration shall include:

(a) the brand and grade;

(b) the guaranteed analysis;

(c) the source of each plant food element guaranteed;

(d) the name and address of the registrant;

(e) a copy or facsimile of each label and of promotional material when requested by the department.

Further, the department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product which is not generally recognized as having the values claimed at the use rates recommended.

(2) A distributor may not be required to register any brand or grade of commercial fertilizer which is already registered under this section by another person.

(3) The plant nutrient content of every brand and grade of commercial fertilizer shall remain uniform for the period of registration.

(4) No person shall distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures, or specialty fertilizer, until a license to distribute has been obtained, for each facility distributing into this state and for each handling facility in this state, from the department upon payment of a fifty dollar ($50) fee for each license. The department may exempt, by rule, manufacturers. All licenses expire on December 31 of each year and are subject to the following:

(a) The application for license shall be on forms provided by the department.

(b) The applicant shall provide a sample copy of labeling to be used. The form of labeling shall meet department standards, established by rule, and all labeling shall be in proper form.

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(c) The licensee is not required to register a grade of fertilizer registered by the manufacturer, or blended to grade from registered products by the licensee.

(5) The manufacturer or distributor shall at all times deliver a uniform grade of fertilizer or soil amendment. When two (2) or more fertilizers are delivered in the same load, they shall be thoroughly and uniformly mixed unless they are in separate compartments.

Section 4. There is a new R.C.M. section numbered 3-1716.1 that reads as follows:

3-1716.1. Labeling. (1) Any commercial fertilizer distributed in this state in packages shall have affixed to or printed on the container a label setting forth in clearly legible and conspicuous form:

(a) the net weight;

(b) the name and address of the manufacturer or distributor guaranteeing the analysis;

(c) the brand and product name;

(d) the grade;

(e) the guaranteed analysis; and

(f) other requirements as established by rule.

(2) All commercial fertilizer delivered in this state in bulk, whether a manufactured grade or blended grade, shall be accompanied by a clearly legible document, which shall be supplied to the purchaser at the time of delivery, and at the time his invoice is delivered. The document shall show:

(a) net weight;

(b) name and address of the distributor or manufacturer guaranteeing the analysis;

(c) guaranteed analysis, or, on blended fertilizer, the net weight and guaranteed analysis of each ingredient added; and

(d) other requirements as established by rule.

(3) When distributed in containers, soil amendments shall have a label affixed to or printed on the container. When delivered in bulk the label shall be clearly legible and shall accompany the delivery of the product. This label shall be supplied to the purchaser at the time of delivery and at the time of invoicing. The label shall contain the following information:

(a) net weight;

(b) name and address of the registrant or licensee who is responsible for the product;

(c) brand and product name;

(d) guaranteed analysis;

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(e) other requirements, such as particle size, as established by rule.

Section 5. There is a new R.C.M. section numbered 3-1717.1 that reads as follows:

3-1717.1. Fees. (1) There shall be paid to the department fees on all commercial fertilizer, except specialty fertilizers sold in packages of ten (10) pounds or less, and unmanipulated animal and vegetable manures distributed in this state, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(a) Inspection, twenty cents ($.20) per ton. The department may by rule after hearing, adjust the inspection fee not to exceed a maximum of twenty-five cents ($.25) per ton to maintain adequate funding for the administration of this act. Any change in fee becomes effective on the first day of a reporting period. All registrants shall be given notice of any change in fees before the effective date.

(b) Assessment, the fee prescribed in section 3-1729. The assessment fee shall be used to fund educational and experimental programs as provided in sections 3-1729, 3-1730, 3-1731 and 3-1734, R.C.M. 1947.

(2) There shall be paid to the department on all soil amendments distributed in this state an inspection fee of ten cents ($.10) per ton subject to the following provisions:

(a) sales to manufacturer's or exchanges between them are exempt; and

(b) when less than fifty (50) tons of registered soil amendment is sold per six (6) month period, there shall be paid to the department a fee of five dollars ($5) per soil amendment per six (6) month period in lieu of the ten cents ($.10) per ton fee. Inspection fees shall be used by the department for administration of this act.

(3) Every registrant and licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer in packages of ten (10) pounds or less and unmanipulated manures, to an unlicensed or unregistered person, in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer and/or soil amendment distributed in this state during the six (6) month period. The report is due on or before the thirtieth day of the month following the close of each period. The registrant or licensee shall pay the proper fees, as set forth in subsection (1) of this section, at that time.

If the tonnage report is not filed and the payment of fees is not made within thirty (30) days after the end of the period a collection fee amounting to ten percent (10%) of the amount due but not less than ten dollars ($10) shall be assessed against the registrant or licensee, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant or licensee.

(4) All fees collected for licenses, registration and inspection, and

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moneys collected as penalties shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the earmarked revenue fund.

Section 6. Section 3-1718, R.C.M. 1947, is amended to read as follows:

"**3-1718. Inspection, sampling, analysis.** (1) The department, in cooperation with the agricultural experiment station of Montana state university, shall sample, inspect, analyze, and test commercial fertilizers *and soil amendments* distributed in this state at a time and place and to an extent necessary to determine whether the commercial fertilizers *or soil amendments* are in compliance with this chapter. The department may enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers *or soil amendments* subject to this chapter.

(2) The methods of analysis and sampling shall be those adopted by the department from sources such as those of the association of official analytical chemists. The results of analysis, together with additional information the department considers advisable, shall be transmitted promptly to the manufacturer and to the dealer or person in whose possession the product was sampled.

(3) The department, in determining whether any commercial fertilizer is deficient in plant food, *or soil amendment is deficient,* shall be guided solely by the official sample obtained and analyzed as provided for in paragraphs (1) and (2) of this section.

(4) If on the basis of an inspection or the analysis of the official sample a commercial fertilizer *or soil amendment* is found to be subject to penalty or other legal action, the department shall forward to the registrant notification of the violation at least ten (10) days before its report is made public. If during that period no adequate evidence to the contrary is made available to the department, the report becomes official. Upon request, the department shall furnish to the registrant a portion of any sample found subject to penalty or other legal action."

Section 7. There is a new R.C.M. section numbered 3-1720.1 that reads as follows:

3-1720.1. Misbranding and adulteration — prohibition. No person shall distribute a misbranded or adulterated fertilizer or soil amendment. (1) A commercial fertilizer or soil amendment is misbranded if it:

(a) carries any false or misleading statement upon or attached to the container, or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the product;

(b) is distributed under the name of another product;

(c) is not labeled as required in section 3-1716.1 and in accordance with rules prescribed under this act; or

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(d) purports to be or is represented as a commercial fertilizer, or is represented as containing a plant nutrient or commercial fertilizer, unless that plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by rule of the department. In adopting this type rule the department shall give due regard to commonly accepted definitions and official fertilizer terms as issued by the association of American plant food control officials.

Section 8. There is a new R.C.M. section numbered 3-1721.1 that reads as follows:

3-1721.1. Licensee reports — confidentiality — inspection — failure to file. (1) Information contained in the reports shall be held confidential by the department. Summary data published by the department shall be in a form that will not disclose details of any operation or business.

(2) The department has the right to inspect and audit, during normal business hours, each licensee's records for the purpose of verifying tonnage reports.

(3) Failure to file an accurate report constitutes a violation of this act and may be punished by fine, revocation of license, or both.

Section 9. Section 3-1722, R.C.M. 1947, is amended to read as follows:

"**3-1722. Publications.** The department shall publish at least annually information concerning the sales of commercial fertilizers *and soil amendments* together with data on their production and use as it considers advisable, and shall report the results of the analysis based on official samples of commercial fertilizers *and soil amendments* sold in this state."

Section 10. There is a new R.C.M. section numbered 3-1723.1 that reads as follows:

3-1723.1. Rules — adoption by department. (1) The department may adopt those rules for commercial fertilizer and soil amendment which are specifically authorized in this act and those other reasonable rules necessary for the efficient enforcement of this act.

(2) In adopting rules the department shall follow procedures prescribed in the Montana Administrative Procedure Act.

Section 11. Section 3-1724, R.C.M. 1947, is amended to read as follows:

"**3-1724. Cancellation or refusal of registration or licenses.** *(1)* The department may cancel the registration of any commercial fertilizer or *soil amendment and may* refuse to register any commercial fertilizer *or soil amendment* upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no registration may be revoked or refused until the registrant is given the opportunity to *amend his application or correct other practices.*

(2) The department may cancel any license or refuse to license any person when it has satisfactory evidence that the person has used fraud-

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ulent or deceptive practice in the evasion or attempted evasion of this chapter or any rules adopted under it. However, no license may be revoked or refused until the person involved is given the opportunity to appear for a hearing by the department."

Section 12. There is a new R.C.M. section numbered 3-1725.1 that reads as follows:

3-1725.1. Enforcement — embargo order — condemnation. (1) When the department has reasonable cause to believe any lot of commercial fertilizer or soil amendment is in violation of this act or a rule adopted by the department, it may issue and enforce a written or printed embargo order, requiring the person holding the commercial fertilizer or soil amendment not to dispose of it in any manner until written permission is granted by the department or the court. The department shall release the product when this act and the rules of the department have been complied with. If compliance is not obtained within thirty (30) days, the department may begin, or upon the request of the registrant or the person holding the product shall begin, proceedings for condemnation.

(2) Commercial fertilizer or soil amendment not in compliance with this act or the rules of the department may be seized on complaint of the department to a district court in the area in which the product is located. If the court finds the product in violation of this act and orders its condemnation, the fertilizer or amendment shall be disposed of in any manner consistent with the quality of the product and state law. The disposition of the product may not be ordered by the court without first giving the owner or person from whom the product was seized an opportunity to apply to the court for release of the product or for permission to process or relabel the product to bring it into compliance with this act.

Section 13. There is a new R.C.M. section numbered 3-1726.1 that reads as follows:

3-1726.1. Plant food deficiency and commercial value. (1) Penalty for nitrogen, available phosphoric acid or phosphorus and potash or potassium. If the analysis shows that a commercial fertilizer is deficient:

(a) in one or more of its guaranteed primary plant foods (NPK) beyond the "investigational allowance" as established by regulation, or

(b) if the overall index value of the fertilizer is below the level established by regulations, a penalty of two (2) times the commercial value of that deficiency, as determined by the dealer or manufacturer's price on the date of sampling of the deficiency or deficiencies, shall be assessed. When a commercial fertilizer is subject to a penalty under both (a) and (b) the larger penalty applies.

(2) Penalty for other deficiencies — deficiencies beyond the investigational allowances as established by regulation in any other constituent covered under section 3-1714.3 (1)(b), (c) and (d), R.C.M. 1947, which the registrant is required to or may guarantee, shall be evaluated and penalties shall be assessed at two times the commercial value of the deficiency as determined by the dealer's retail price on the date of sampling.

(3) Nothing contained in this section shall prevent any person from appealing the department's decision to a court of competent jurisdiction.

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(4) All penalties assessed under this section shall be paid to the consumer of the lot, *not to exceed one hundred (100) tons,* of commercial fertilizer represented by the sample analyzed within three (3) months after the date of notice from the department to the registrant or licensee. If at the end of the three (3) month period, the consumer cannot be found, receipts shall be taken and promptly forwarded to the department for deposit in the earmarked revenue fund as provided in section 3-1717.1.

Section 14. Section 3-1727, R.C.M. 1947, is amended to read as follows:

"**3-1727. Violations-enforcement proceedings — judicial review.** (1) If it appears from the examination of any commercial fertilizer that this chapter or the rules adopted under this chapter have been violated, the department shall give notice of the violations to the registrant, *licensee,* distributor, or possessor from whom the sample was taken. A person notified shall be given an opportunity to be heard under rules of the department. If it appears after a hearing, either in the presence or absence of the person notified, that this chapter or rules issued under this chapter have been violated, the department may certify the facts to the proper prosecuting attorney.

(2) A person who violates this chapter or the rules adopted under this chapter, or who obstructs, prevents, or attempts to prevent the department from performing its duty under this chapter, is guilty of a misdemeanor and shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) for the first violation, and not less than three hundred dollars ($300) nor more than one thousand dollars ($1,000) for a subsequent violation. In all prosecutions under this chapter involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis of the department is prima facie evidence of the composition.

(3) Nothing in this chapter requires the department to report for prosecution or for the beginning of seizure proceedings minor violations of this chapter when it believes that the public interest will be best served by a suitable notice of warning in writing.

(4) A prosecuting attorney to whom a violation is reported shall prosecute the violator in a court of competent jurisdiction without delay.

(5) The department may apply for and the court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under the chapter notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

(6) If a person adversely affected by an act, order, or ruling made by the department under this chapter is not entitled to a hearing before the department to determine his rights, he may within forty-five (45) days, sue in the district court of any county where the alleged violation giving rise to the department's act, order, or ruling occurred, for new trial of the issues bearing upon the act, order, or ruling. After the trial the court may issue and enforce those orders, judgments, or decrees it considers proper, just, and equitable."

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Section 15. Section 3-1728, R.C.M. 1947, is amended to read as follows:

"**3-1728. Exchanges between manufacturers.** Nothing in this act shall be construed to restrict or avoid sales or exchanges of commercial fertilizers *or soil amendment* to each other by importers, manufacturers, or manipulators who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizer *or soil amendment* to manufacturers, or manipulators who have registered their brands and grades *or licensed their facilities* as required by the provisions of this act."

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Repealer.** Sections 3-1714, 3-1715, 3-1716, 3-1717, 3-1720, 3-1721, 3-1723, 3-1725, and 3-1726, R.C.M. 1947, are repealed.

Section 18. **Effective date.** This act is effective January 1, 1976.

Approved April 7, 1975.

CHAPTER NO. 280

AN ACT TO CONSOLIDATE ALL FUNCTIONS OF STATE GOVERNMENT DEALING WITH ADDICTIVE DISEASES IN THE DEPARTMENT OF INSTITUTIONS; AMENDING AND RENUMBERING SECTIONS 69-6203, 69-6212 AND 69-6225; RENUMBERING SECTIONS 69-6201, 69-6204 THROUGH 69-6207, 69-6211, 69-6213 THROUGH 69-6224; AND AMENDING SECTIONS 82A-601.1 AND 82A-801.1.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-6203, R.C.M. 1947, is renumbered 80-2702, and amended to read as follows:

"**80-2702. Duties of department — department authorized to accept gifts — enter into contracts — acquire and dispose of property.** (1) The department of *institutions*, hereafter referred to as department in this chapter, shall:

(a) Plan, promote, and assist in the support of alcohol and drug dependence prevention, treatment, and control programs;

(b) Conduct, sponsor, and support research, investigations, and studies, including evaluation, of all phases of alcohol and drug dependence;

(c) Assist the development of educational and training programs relative to alcohol and drug dependence, and carry on programs to assist the

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public, and technical and professional groups, in becoming fully informed about alcohol and drug dependence;

(d) Promote, develop, and assist, financially and otherwise, alcohol and drug dependence programs administered by other state agencies, local government agencies, and private nonprofit organizations and agencies;

(e) Encourage and promote effective use of facilities, resources, and funds in the planning and conduct of programs and activities for prevention, treatment, and control of alcohol and drug dependence and, in this respect, cooperate with and utilize to the maximum possible extent the resources and services of federal, state, and local agencies.

(2) To carry out this act, the department may:

(a) Accept gifts, grants, and donations of money and property from public and private sources;

(b) Enter into contracts;

(c) Acquire and dispose of property."

Section 2. Section 69-6212, R.C.M. 1947, is renumbered 80-2709, and amended to read as follows:

"**80-2709. Definitions.** For purposes of this act:

(1) "alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

(2) "approved private treatment facility" means a private agency meeting the standards prescribed in section 69-6216 (1) and approved under section 69-6216;

(3) "approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this act through a contract with the department and approved under section 69-6216;

(4) "department" means the department of *institutions* provided for in section *82A-801,* R.C.M. 1947;

(5) "incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment;

(6) "incompetent person" means a person who has been adjudged incompetent by the district court;

(7) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(8) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, voca-

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tional rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons."

Section 3. Section 69-6225, R.C.M. 1947, is renumbered 80-2722, and is amended to read as follows:

"**80-2722. Departmental reports to legislature.** The department shall achieve full implementation of the provisions of the act, as set forth in this chapter and related sections, no later than January 1, 1976. A progress report on the implementation shall be made to the 1975 legislative session. Thereafter the *department* shall report, to each legislative session, on the status of the implemented act. This report, or any part thereof, may be included as the department's state plan for alcohol abuse and alcoholism."

Section 4. There is a new R.C.M. section numbered 80-2703 that reads as follows:

80-2703. Administration of federal program. The department of institutions is hereby designated the single state agency for the administration of federal programs under:

(1) the Drug Abuse Office and Treatment Act of 1972, Public Law 92-255 as amended, 21 U.S.C. section 1176; and

(2) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Public Law 91-616 as amended, 42 U.S.C. section 4573.

Section 5. The provisions of sections 82A-116 through 82A-122 are applicable to this act.

Section 6. Section 69-6201 is renumbered 80-2701, 69-6204 is renumbered 80-2704, 69-6205 is renumbered 80-2705, 69-6206 is renumbered 80-2706, 69-6207 is renumbered 80-2707, 69-6211 is renumbered 80-2708, 69-6213 is renumbered 80-2710, 69-6214 is renumbered 80-2711, 69-6215 is renumbered 80-2712, 69-6216 is renumbered 80-2713, 69-6217 is renumbered 80-2714, 69-6218 is renumbered 80-2715, 69-6219 is renumbered 80-2716, 69-6220 is renumbered 80-2717, 69-6221 is renumbered 80-2718, 69-6222 is renumbered 80-2719, 69-6223 is renumbered 80-2720, and 69-6224 is renumbered 80-2721.

Section 7. Section 82A-601.1, R.C.M. 1947, is amended to read as follows:

"**82A-601.1. Functions of department.** The department and its units have responsibility for the administration of laws relating to public health, including, but not limited to, laws on:

(1) Food services (Title 27, chapter 6);

(2) Foods, drugs, and cosmetics (Title 27, chapter 7);

(3) Flour and bread (Title 27, chapter 8);

(4) Lodging establishments (Title 34, chapter 3);

(5) Sanitarians (Title 69, chapter 34);

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(6) Ambulance services (Title 69, chapter 36);

(7) Air pollution (Title 69, chapter 39);

(8) Refuse disposal areas (Title 69, chapter 40);

(9) Industrial hygiene (Title 69, chapter 42);

(10) Tuberculosis control (Title 69, chapter 43);

(11) Vital statistics (Title 69, chapter 44);

(12) Local boards of health (Title 69, chapter 45);

(13) Venereal disease control (Title 69, chapter 46);

(14) Shoddy control (Title 69, chapter 47);

(15) Water pollution (Title 69, chapter 48);

(16) Public water supplies (Title 69, chapter 49);

(17) Subdivisions (Title 69, chapter 50);

(18) Cadavers (Title 69, chapter 51);

(19) Hospitals and related facilities (Title 69, chapter 52);

(20) Hospital survey and construction (Title 69, chapter 53);

(21) Cesspools, septic tanks, and privies, etc. (Title 69, chapter 54);

(22) Public swimming pools and bathing places (Title 69, chapter 55);

(23) Tourist campgrounds (Title 69, chapter 56);

(24) Control of ionizing radiation (Title 69, chapter 58);

(25) Water treatment plants and distribution systems (Title 69, chapter 59);

(26) Refuse disposal districts (Title 69, chapter 60)."

Section 8. Section 82A-801.1, R.C.M. 1947, is amended to read as follows:

"**82A-801.1. Functions of department.** The department and its units are responsible for the administration of laws relating to institutions, including, but not limited to, laws pertaining to:

(1) District youth guidance homes (Title 10, chapter 11);

(2) Warm Springs state hospital (Title 38, chapter 1);

(3) Examination and commitment of persons mentally deranged (Title 38, chapter 2);

(4) Patient transfers (Title 38, chapter 3);

(5) Examination of patients and voluntary admissions (Title 38, chapter 4);

(6) Convalescent leave of patients (Title 38, chapter 5);

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(7) Voluntary sterilizations (Title 69, chapter 64);

(8) Juvenile facilities (Title 80, chapter 14);

(9) Institutional industries (Title 80, chapter 15);

(10) Payments for care of patients (Title 80, chapter 16);

(11) Galen state hospital (Title 80, chapter 17);

(12) Montana veterans' home (Title 80, chapter 18);

(13) State prison (Title 80, chapter 19);

(14) Montana childrens center (Title 80, chapter 21);

(15) Mountain View school and Pine Hills school (Title 80, chapter 22);

(16) Boulder river school and hospital (Title 80, chapter 23);

(17) Mental hygiene services and mental health centers (Title 80, chapter 24);

(18) Montana center for the aged (Title 80, chapter 25);

(19) Mental retardation programs (Title 80, chapter 26);

(20) Probation, parole, and clemency (Title 94, chapter 98)*;*

(21) Alcohol and drug dependence (Title 80, chapter 27)."

Approved April 7, 1975.

CHAPTER NO. 281

AN ACT PROVIDING PROCEDURES FOR THE DISQUALIFICATION OF JUSTICES, MAGISTRATES, AND JUSTICES OF THE PEACE; AMENDING SECTION 93-901, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 95-2010 that reads as follows:

95-2010. Disqualification of justice, magistrate, or justice of the peace. (1) The defendant or the prosecution may move the court in writing for the disqualification of a justice, magistrate, or justice of the peace on the ground that he cannot have a fair and impartial hearing or trial before the justice, magistrate, or justice of the peace. The motion shall be made at least fifteen (15) days prior to the trial of the case, or any retrial thereof after appeal, except for good cause shown. Upon the filing of such a motion the justice, magistrate, or justice of the peace against whom the motion is filed shall be without authority to act further in the criminal action, motion or proceeding but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the

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order of business, the power of transferring the criminal action or proceeding to some other court, nor to the power of calling in another justice, magistrate, or justice of the peace to sit and act in such criminal action or proceeding, providing that no justice, magistrate, or justice of the peace shall so arrange the calendar as to defeat the purposes of this section. Not more than one (1) justice, magistrate, or justice of the peace can be disqualified in the criminal action or proceeding, at the instance of the prosecution and not more than one (1) justice, magistrate, or justice of the peace at the instance of the defendant or defendants.

If either party in any matter above-mentioned shall file the motion as herein provided such party may not complain of any reasonable delay as the result thereof.

The provision of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

(2) In addition to the provision of subsection (1) any defendant may move at any time for the disqualification of a justice, magistrate, or justice of the peace for cause, supported by affidavit. Upon the filing of such motion the court shall conduct a hearing and determine the merits of the motion.

Section 2. Section 93-901, R.C.M. 1947, is amended to read as follows:

"93-901. Cases in which judge may be disqualified — calling in another judge. Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;

4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a judge, *justice, magistrate, or justice of the peace.* Such affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the court in which the same may be pending.

In any district having only one judge, *justice, magistrate, or justice of the peace,* the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least fifteen (15) days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or pro-

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ceeding for at least the period of fifteen (15) days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge, *justice, magistrate, or justice of the peace,* as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court nor to the power of calling in another judge, *justice, magistrate, or justice of the peace* to sit and act in such action or proceeding, providing that no judge, *justice, magistrate, or justice of the peace* shall so arrange the calendar as to defeat the purposes of this section. No more than two judges, *justices, magistrates, or justices of the peace* can be disqualified in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge, *justice, magistrate, or justice of the peace* in any district in which said affidavit is made and filed, upon the first disqualification of a judge, *justice, magistrate, or justice of the peace* in the cause, another judge, *justice, magistrate, or justice of the peace,* residing in the district wherein the affidavit is made and filed, must be called in to preside in such action, motion, or proceeding; upon the second or any subsequent disqualification of a judge, *justice, magistrate, or justice of the peace* in the cause, a judge, *justice, magistrate, or justice of the peace* of another district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a judge, *justice, magistrate, or justice of the peace* of another district of the state; when another judge, *justice, magistrate, or justice of the peace* has assumed jurisdiction of an action, motion, or proceeding, the clerk of the court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge, *justice, magistrate, or justice of the peace,* called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge, *justice, magistrate, or justice of the peace* assuming jurisdiction of such action, motion, or proceeding.

5. Nothing contained in subsection 4 of this section shall apply to a justice of the supreme court."

Approved April 7, 1975.

CHAPTER NO. 282

AN ACT TO AMEND SECTIONS 69-5204 AND 69-5205, R.C.M. 1947, RELATING TO LICENSE FEES FOR HOSPITALS, HOSPITAL RELATED FACILITIES, AND LONG-TERM CARE FACILITIES.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-5204, R.C.M. 1947, is amended to read as follows:

"**69-5204. License fees.** The department shall collect *fees* for each license issued *for* deposit in the state general fund *as follows:*

(a) facilities with twenty (20) beds or less—$20;

(b) facilities with twenty-one (21) beds or more—$1 per bed."

Section 2. Section 69-5205, R.C.M. 1947, is amended to read as follows:

"**69-5205. Application for license — procedure.** The procedure to apply for a license is:

(1) at least thirty (30) days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee;

(2) the application shall contain:

(a) the name and address of the applicant if an individual; or the name and address of each member if a firm, partnership or association; or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract or lease agreement, if operated by a person other than the owner."

Approved April 7, 1975.

CHAPTER NO. 283

AN ACT DIRECTING COUNTY TREASURERS TO ACCEPT PAYMENT OF TAXES FROM THE BUYER OF A PORTION OF A LISTED PARCEL OF LAND, WHEN THE PURCHASE HAS BEEN RECORDED; DIRECTING THE COOPERATION OF THE DEPARTMENT OF REVENUE; AMENDING SECTION 84-508, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 84-508, R.C.M. 1947, is amended to read as follows:

"**84-508. Persons claiming ownership of land desiring to be assessed or to pay taxes.** Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefore, may have his name inserted with that of the person to whom such land is assessed.

When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall cooperate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists."

Approved April 7, 1975.

CHAPTER NO. 284

AN ACT TO PROVIDE FOR THE SALE OR TRADE OF COUNTY PROPERTY BY THE GOVERNING BODY OF THE COUNTY; AMENDING SECTION 16-1009, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1009, R.C.M. 1947, is amended to read as follows:

"**16-1009. Sale of property.** (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred ($100.00) dollars for real property or a value of *two thousand five hundred dollars ($2,500)* for personal property, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four *(4)* successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred ($100.00) dollars for real property and of *two thousand five hundred dollars ($2,500)* for personal property, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such property, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equip-

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ment, as provided in section 16-1803, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) The board of county commissioners shall have the power to sell any property, real or personal, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, to the school district directly for its appraised value which shall represent a fair market value of such property without the necessity of a public auction. If the property to be sold to the school district is reasonably of a value in excess of one hundred ($100.00) dollars for real property and of *two thousand five hundred dollars ($2,500)* for personal property, notice of the sale shall be given by publication in a newspaper in said county, notice to be published once a week for four (4) successive weeks and posted in five (5) public places in the county.

(3) Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property reappraised. Upon such application the district judge shall appoint for such purpose three (3) disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or reappraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five dollars ($5.00) per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within three (3) months prior to the date of the sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety per cent (90%) of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred dollars ($100.00) for real property and *two thousand five hundred dollars ($2,500)* for personal property, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five (5) public places in the county at least five (5) days before the date of sale. No title to any property sold under the provisions hereof, shall pass from the county until

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the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(5) Provided, however, if within one (1) year no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

(6) The funds derived from the sale in the discretion of the board of county commissioners may be credited to a construction reserve account and thereafter used for capital outlay for present or future construction of or an addition to a courthouse, or county jail or county hospital."

Approved April 7, 1975.

CHAPTER NO. 285

AN ACT TO REQUIRE THAT PUBLIC NOTICE BE GIVEN OF COUNTY TAX APPEAL BOARD MEETING; MOVING THE TIME OF SUCH MEETINGS FORWARD ONE MONTH; AMENDING SECTION 84-601, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-601, R.C.M. 1947, is amended to read as follows:

"**84-601. County tax appeal board — when to hear protests.** The board of county commissioners of each county shall appoint a three (3) member county tax appeal board. The members of each tax appeal board shall be residents of the county in which they serve; they shall serve four (4) year terms and shall effective July 1, 1973, receive compensation of twenty-five dollars ($25) per day and travel expenses only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses will be paid from the appropriation of the state tax appeal board. The first term shall run from July 1, 1973, through December 31, 1976. The county tax appeal board must meet on the third Monday of *June* in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than the second Monday in August. In connection with any such appeal, the county tax appeal board shall have the authority to change any assessment or fix the assessment at some other level. *It is the duty of the county clerk to publish a notice to taxpayers of the time the county tax appeal board will meet to hear protests concerning assessments and*

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the latest date the county tax appeal board may take applications for such hearings, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct. The notice shall be published at least seven (7) days prior to the first meeting of the county tax appeal board."

Section 2. This act shall be effective on its passage and approval.

Approved April 7, 1975.

CHAPTER NO. 286

AN ACT TO PROVIDE A TEN YEAR STATUTE OF LIMITATIONS ON ALL UNPAID TAXES LEVIED AND ASSESSED PRIOR TO SAID TEN YEAR PERIOD, AGAINST REAL PROPERTY, AND TO PROVIDE FOR THE DESTRUCTION OF ALL SUCH TAX RECORDS OVER THIRTY YEARS OLD; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-4175.1 that reads as follows:

84-4175.1. Certain unpaid taxes uncollectible — stricken from records. All unpaid taxes, which constitute a lien on real property in the state of Montana, levied and assessed against real property which have remained delinquent, more than ten (10) years prior to the effective date of this act, whether the levy be by general or special assessment, or by the state of Montana, or any county, city, or political subdivision of the state of Montana, are hereby declared to be uncollectible and stricken from the respective tax records.

Section 2. There is a new R.C.M. section numbered 84-4175.2 that reads as follows:

84-4175.2. Treasurers to destroy certain tax records. The treasurer of each county, city, or town in the state of Montana, may destroy all tax records in his possession more than thirty (30) years old.

Section 3. This act shall be effective July 1, 1976.

Approved April 7, 1975.

CHAPTER NO. 287

AN ACT AMENDING SECTIONS 23-3704, 23-3706, 23-3707, 23-3712, 23-3713, AND 23-3717, R.C.M. 1947, TO PROVIDE THAT ABSENTEE VOTER APPLICATION FORMS AND BALLOT ENVELOPES SHALL BE AFFIRMED BY THE ABSENTEE ELECTOR.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3704, R.C.M. 1947, is amended to read as follows:

"**23-3704. Form of application — manner.** (1) Application for absentee ballots shall be made on a form furnished by the registrar of the county of which the applicant is an elector, the city clerk, or clerk of a first class school district. The form shall be prescribed by the secretary of state except as provided in section 23-3702.

(2) The applicant shall subscribe the application *affirming that the information contained in the application is true and complete to the best of his knowledge.* The application is not complete without this *affirmation.*

(3) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any written request signed by the applicant, addressed to the registrar of the applicant's residence."

Section 2. Section 23-3706, R.C.M. 1947, is amended to read as follows:

"**23-3706. Mailing ballot to elector — affirmation — electors in the United States service.** (1) Either upon receipt of the application or immediately after the official ballot for the precinct of the applicant's residence has been printed, the registrar, city clerk, or clerk of a first class school district shall send by mail, postage prepaid, whatever official ballots are necessary.

(2) The proper officer shall enclose an envelope with the ballots which has written on the front the name, title, and post-office address of the officer sending it, and upon the other side a printed *affirmation* in a form prescribed by the secretary of state.

(3) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each one-quarter (¼) inch wide, extending from one side of the envelope to the other, with an intervening space of one-quarter (¼) inch, with the words "Official Election Ballot Material—via Air Mail," between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage." In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red. The gummed flap of the envelope supplied for the return of the ballot shall be separated by wax paper or other appropriate protective insert. Voting instructions provided in subparagraph (5) of this section shall include a procedure to be followed by absentee voters, such as notation of the facts on the back of the envelope duly signed by the voter, in instances of adhesion of the balloting material.

(4) The return address shall be self-addressed to the registrar or city clerk.

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(5) Instructions for voting shall be enclosed with the ballots for electors in the United States service. Instructions shall include information concerning the type or types of writing instruments which may be used to mark the absentee ballot."

Section 3. Section 23-3707, R.C.M. 1947, is amended to read as follows:

"**23-3707. Marking and affirming to ballot by elector.** (1) The elector shall complete the *affirmation at the time he executes his vote.*

(2) The elector shall mark each ballot in a manner so *no other person can* see the vote.

(3) The elector *shall fold the ballot* to conceal the vote and shall place it in the envelope and seal it.

(4) The *elector* shall sign at the end of the certificate and *affirmation.*

(5) The elector shall mail the envelope, postage prepaid, or deliver it to the registrar, city clerk, or clerk of a first class school district."

Section 4. Section 23-3712, R.C.M. 1947, is amended to read as follows:

"**23-3712. Voting before election day by prospective absentee or physically incapacitated elector.** (1) An elector who is present in his county after the official ballots of his county or school district have been printed who has reason to believe that he will be absent from the county or school district or physically incapacitated on election day, may vote before election day before the registrar, city clerk or school district clerk.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the registrar, city clerk or school district clerk, he shall deal with it in the same manner as if it had come by mail."

Section 5. Section 23-3713, R.C.M. 1947, is amended to read as follows:

"**23-3713. Envelopes containing ballots — deposit in box and rejection of ballot.** (1) While the polls are open on election day, the election judges shall first open the outer envelope only, and compare the signature of the voter on the application and on the *affirmation.*

(2) If the election judges find that the signatures correspond, that the *affirmation* is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding it or permitting it to be examined, ascertain whether the stub is still attached and whether the number corresponds to the number in the certificate of the registrar or city clerk.

(3) If so, they shall endorse it the same way that other ballots are endorsed, detach the stub, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

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(4) If the *affirmation* is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector."

(5) The absentee ballot envelope, when it has been voted or rejected, shall be deposited in the ballot box containing the general or party ballots, and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached, or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for ...." filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application shall be enclosed in an envelope, sealed, and the judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are) ....."

(8) The election judges shall designate the rejected ballot as "general ballot," if it is a ballot for candidates that are rejected.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. .... in the certificate on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots."

Section 6. Section 23-3717, R.C.M. 1947, is amended to read as follows:

"23-3717. False affirmation perjury — official misconduct a misdemeanor. (1) If a person willfully *makes false statements in an affirmation required by this chapter* he is guilty of perjury.

(2) If the registrar, clerk, or any election officer:

(a) Refuses or neglects to perform any duties prescribed by this act,

(b) Makes false statements in his certificate regarding *affirmations*,

(c) Looks at any marks made by the voter upon the ballot,

(d) Allows any person other than the voter to be present at the marking of such ballot,

(e) Sees any marks made by the voter on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not more than five

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hundred dollars ($500), imprisoned in the county jail for not more than six (6) months, or both."

Approved April 7, 1975.

CHAPTER NO. 288

AN ACT RELATING TO PUBLIC SERVICE COMMISSION APPROVAL OF CERTAIN MOTOR CARRIER AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 8-103.4 that reads as follows:

8-103.4. Approval of carrier agreements. (1) Any carrier as defined in section 8-101(h) which is a party to an agreement between or among two (2) or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement and the commission shall by order approve any agreement, if approval thereof is not prohibited by subsections (3), (4), or (5) of this section. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section, shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

(3) The commission may not approve under this section any agreement between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in this section and is limited to matters relating to the transportation under joint rates or over through routes.

(4) The commission may not approve under this section any agreement which it finds is an agreement with respect to pooling or division of traffic, service, or earnings.

(5) The commission may not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there

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is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(6) The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under this section, or any terms or conditions upon which such approval was granted, is not in conformity with this section or whether any such term or conditions is not necessary for the purpose of conformity with this section. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with this section, and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with this section or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, may be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

(7) No order may be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(8) The parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsections (3), (4), or (5) of this section, hereby exempted from Montana antitrust laws with respect to such agreement, including section 51-401 or any other statutes prohibiting monopolies, price fixing, or restraint of trade.

(9) Any action of the commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of subsection (8).

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. This act is effective upon passage and approval.

Approved April 7, 1975.

CHAPTER NO. 289

AN ACT TO AMEND SECTIONS 26-202.1 AND 26-230, R.C.M. 1947, TO PROVIDE FOR A FEE INCREASE IN THE RESIDENT CONSERVATION LICENSE; DELETE THE PIONEER AND COMBINATION PIONEER-CONSERVATION LICENSE; AND PROVIDE VETERANS RESIDING AT HOSPITALS OPERATED BY VETERANS ADMINISTRATION FREE FISHING PRIVILEGES.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"**26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses.** (1) Class A license—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dollars ($5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5, Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

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(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars ($20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1 (2) (a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars ($10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not

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a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

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(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a *conservation license* issued by the state fish and game commission for a fee of *one dollar ($1).* The form of such license shall be prescribed by the fish and game commission.

(b) *Any veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, and residents* of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(d) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(e) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(f) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.

(17) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which

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shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(18) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission."

Section 2. Section 26-230, R.C.M. 1947, is amended to read as follows:

"**26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees —expiration.** A wildlife conservation license shall be sold upon written application in such form and containing his name, age, occupation, place of residence, post-office address, length of time in the state of Montana, whether a citizen of the United States or an alien and present a driver's license or other identification to substantiate such information and shall be subscribed by the applicant. Hunting, fishing or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such regulations as the commission may prescribe. *Resident and nonresident wildlife conservation licenses may be purchased for a fee of one dollar ($1).* Licenses issued shall be void after the thirtieth (30th) day of April next succeeding their issuance."

Approved April 7, 1975.

CHAPTER NO. 290

AN ACT REQUIRING THE PUBLIC SERVICE COMMISSION TO ITEMIZE EXPENDITURES DISALLOWED AS OPERATING COSTS IN GAS OR ELECTRIC RATE-MAKING PROCEEDINGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 70-136 that reads as follows:

70-136. Itemization of disallowed expenses by certain utilities. The public service commission, in any decision ordering a change in the rates which may be charged for electricity or natural gas, shall list each expenditure submitted by the utility for allowance as an operating cost which is disallowed by the commission as an element of operating costs. The list of disallowed expenditures shall appear in the written decision of the commission and shall itemize each expenditure by amount, category, and purpose.

Approved April 7, 1975.

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CHAPTER NO. 291

AN ACT AMENDING SECTION 54-316, R.C.M. 1947, TO REQUIRE THE BOARD OF PHARMACISTS TO WAIVE THE REQUIREMENT FOR REGISTRATION OF CERTAIN PRACTITIONERS TO DISPENSE DANGEROUS DRUGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 54-316, R.C.M. 1947, is amended to read as follows:

"54-316. Annual registration required for manufacturer, distributor or dispenser — exceptions — inspection. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must, on and after January 1, 1974, obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this act to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this act.

(3) The following persons need not register and may lawfully possess dangerous drugs under this act:

(a) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(b) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(c) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(d) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

(4) The board of pharmacists shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

(5) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(6) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

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(7) The board may have the establishment of a registrant or applicant for registration inspected."

Approved April 7, 1975.

CHAPTER NO. 292

AN ACT REVISING THE LIVESTOCK MARKET LAWS TO PERMIT THE DEPARTMENT OF LIVESTOCK TO REGULATE CERTAIN TYPES OF NONMARKET SALES AND TO PERMIT LICENSED LIVESTOCK MARKETS TO CONDUCT OCCASIONAL OFF-PREMISE SALES; AMENDING SECTION 46-906, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-906, R.C.M. 1947, is amended to read as follows:

"**46-906. Definitions.** Unless the context requires otherwise, in this act:

(1) "Livestock" means and includes horses, mules, cattle, swine, sheep and goats;

(2) "Person" means a person, copartnership, association or corporation;

(3) "Board" means the board of livestock provided for in section 82A-1303;

(4) "Certificate" means the certificate of public convenience and necessity authorized to be issued under this act;

(5) "Commission basis" means the compensation or charge imposed on the owner of livestock for the services rendered the owner by the operator of the livestock market;

(6) "Livestock market" means a place where a person assembles livestock for either private or public sale by him and the service is compensated for by the owner, on a commission basis or otherwise, except: (a) A place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and no other livestock is sold there or offered for sale; (b) A farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold, and no other livestock is brought there for sale or offered for sale; (c) The premises of a butcher, packer, or processor who received animals exclusively for immediate slaughter; (d) The premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production; (e) A place where a breeder or an association of breeders of livestock of any class assemble and offer for sale and sell under his or their own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

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(7) "Off-premise sale" means the sale of livestock by a livestock market licensed under this chapter at a place other than the one at which the licensee conducts his usual livestock market operation;

(8) "Test station sale" means the sale of livestock from a place where livestock are taken to measure rates of gain under uniform feeding conditions, when that place is not owned by the owner of the livestock."

Section 2. There is a new R.C.M. section numbered 46-906.1 that reads as follows:

46-906.1. Board regulation of certain types of nonmarket sales of livestock. (1) Any person, not a livestock market operator licensed under this chapter, conducting the sale of livestock in a breed sale, or a breed association sale, or at a test station sale, except when all of the livestock are his and are being sold from his own place, shall obtain approval from the board before conducting the sale.

(2) The board, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date, time, and place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all moneys received as purchase for the sale of livestock must be deposited;

(e) the posting of reasonable bond, in an amount determined by the board;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services rendered to them associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the board;

(h) such other information as the board considers necessary.

Section 3. There is a new R.C.M. section numbered 46-907.1 that reads as follows:

46-907.1. Occasional off-premise sales may be authorized. (1) The board may authorize occasional off-premise sales by licensed livestock markets and may establish the conditions under which approval for an off-premise sale may be granted, including any change in bonding requirements the board considers necessary.

(2) No livestock market licensed under this chapter may conduct an off-premise sale without obtaining prior approval of the board.

Approved April 7, 1975.

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CHAPTER NO. 293

AN ACT TO CHANGE THE LAWS RELATING TO HUSBANDS AND WIVES IN REGARD TO THEIR MUTUAL OBLIGATIONS OF SUPPORT, CONTROL OF THEIR INDIVIDUAL PROPERTY AND THEIR ABILITY TO ACT AS INDIVIDUALS, IN ORDER TO ELIMINATE SEXUAL DISCRIMINATION IN SUCH LAWS; AMENDING SECTIONS 5-106, 16-2902, 16-2905, 36-103, 36-110 THROUGH 36-120, 36-127 THROUGH 36-130, 61-104, AND 61-117, R.C.M. 1947; CREATING A NEW SECTION 36-118.1, R.C.M. 1947; AND REPEALING SECTIONS 36-102 AND 36-121, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 36-103, R.C.M. 1947, is amended to read as follows:

"**36-103. Duties of husband and wife as to support.** *Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.*"

Section 2. Section 36-110, R.C.M. 1947, is amended to read as follows:

"**36-110. Married person may prosecute actions.** A married *person* in *his* own name may prosecute action for injuries to *his* reputation, person, property, and character, or for the enforcement of any legal or equitable right, and may in like manner defend any action brought against *himself.*"

Section 3. Section 36-111, R.C.M. 1947, is amended to read as follows:

"**36-111. Individual property of married person.** All the property of *a married person* owned before marriage and that acquired afterwards is *his individual* property. The *married person* may, without consent, agreement and signature of *his spouse,* convey and transfer *his individual* property, real or personal, including the fee simple title to real property or execute a power of attorney for the conveyance and transfer thereof."

Section 4. Section 36-112, R.C.M. 1947, is amended to read as follows:

"**36-112. Inventory of individual personal property of married person.** *A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property, and recorded in the office of the county clerk of the county in which the person lives.*"

Section 5. Section 36-113, R.C.M. 1947, is amended to read as follows:

"**36-113. Effect of filing inventory.** The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the *person so filing.*"

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Section 6. Section 36-114, R.C.M. 1947, is amended to read as follows:

"**36-114. Earnings and accumulations of married person.** The earnings and accumulations of *a married person* are not liable for the debts of *that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.*"

Section 7. Section 36-115, R.C.M. 1947, is amended to read as follows:

"**36-115. Same, when separated.** The earnings and accumulations of *a married person,* and of *his* minor children living with *him* or in *his* custody, while *he* is living separate from *his spouse,* are the *individual* property of *such person. Except that, to the extent that a mutual duty of support between the husband and wife as established by section 36-103 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse or minor children.*"

Section 8. Section 36-116, R.C.M. 1947, is amended to read as follows:

"**36-116. Work and labor of married person.** All work and labor performed by a married *person* for a person other than *his spouse* and children shall, unless there is a written agreement on *his* part to the contrary, be presumed to be performed on *his* separate account. *This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by sections 36-114, 36-115, 36-118, and 36-118.1.*"

Section 9. Section 36-117, R.C.M. 1947, is amended to read as follows:

"**36-117. Debts of spouse contracted before marriage.** The property of *a married person* is not liable for the debts of the *person's spouse* contracted before marriage."

Section 10. Section 36-118, R.C.M. 1947, is amended to read as follows:

"**36-118. Individual property of married person — how far liable.** *Individual property of a married person listed in an inventory as provided in sections 36-112 and 36-113, R.C.M. 1947, or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:*

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse."

Section 11. There is a new R.C.M. section numbered 36-118.1 that reads as follows:

36-118.1. Necessity determined by standard of living. For purposes

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of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children taking into consideration the earnings, resources, and general standard of living of such persons.

Section 12. Section 36-119, R.C.M. 1947, is amended to read as follows:

"**36-119. Support of spouse.** If *a married person who is able neglects* to make adequate provision for the *financial* support of his *spouse*, except in the cases mentioned in the next section, any other person may in good faith supply *the spouse* with articles necessary for support and recover the reasonable value thereof from *the married person who has failed to provide such support.*"

Section 13. Section 36-120, R.C.M. 1947, is amended to read as follows:

"**36-120. Married person not liable when abandoned by spouse.** A *married person* abandoned by his *spouse* is not liable for *the spouse's* support until *the spouse* offers to return, unless *the spouse* was justified, by *the person's* misconduct, in abandoning him; nor is *a married person* liable for support *of a spouse who* is living separate from him by agreement, unless such support is stipulated in the agreement."

Section 14. Section 36-127, R.C.M. 1947, is amended to read as follows:

"**36-127. Married person may act as personal representative, guardian, conservator, or trustee.** A married *person* may be *a personal representative*, guardian, *conservator,* or trustee, and may bind *himself* and the estate *he* represents without any act or assent on the part of *the person's spouse.*"

Section 15. Section 36-128, R.C.M. 1947, is amended to read as follows:

"**36-128. May sue and be sued.** A married *person* may sue and be sued in the same manner as if *he* were sole."

Section 16. Section 36-129, R.C.M. 1947, is amended to read as follows:

"**36-129. Liable for own contracts.** The contracts made by a married *person,* in respect to *his individual* property, labor, or services, shall not be binding upon *the person's spouse*, nor render him nor his property liable therefor; but *the contracting person* and *that person's individual* property shall be liable on such contracts in the same manner as if *such person* were sole."

Section 17. Section 36-130, R.C.M. 1947, is amended to read as follows:

"**36-130. May make contracts.** A married *person* may make contracts, oral or written, sealed or unsealed, and may waive or relinquish

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any right or interest in any real estate, either in person or by attorney, in the same manner, to the same extent, and with the like effect as if *such person* were *sole.*"

Section 18. Section 5-106, R.C.M. 1947, is amended to read as follows:

"5-106. Trust company defined — purposes for which may be formed. The term "Trust Company," when used in this act, means any corporation which is incorporated under the laws of this state for any one or more of the following purposes:

1. To receive moneys in trust, and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest thereon as may be agreed upon.

2. To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or by any corporations, or may be committed or transferred to them by order of any of the courts of record of this state, or any other state, or of the United States.

3. To take and accept by grant, assignment, transfer, devise, or bequest, and hold any real or personal estate or trust created in accordance with the laws of this state, or any other state, or of the United States, and execute such legal trusts in regard to the same on such terms as may be declared, established, or agreed upon in regard thereto.

4. To act as agent for the investment of money for other persons or corporations, and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon.

5. To accept from and execute trusts for married *persons* in respect to their *individual* property, whether real or personal, and act as agents for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

6. To act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver, and to be appointed a trustee, assignee, or receiver, and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors, or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates.

7. To loan money upon unencumbered real estate, collateral, or personal security, and execute and issue its notes, debentures, payable at a future date, and to pledge its mortgages upon real estate and other securities as security therefor.

8. To buy and sell government, state, county, municipal, and other bonds, and all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities, buy and sell gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange.

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9. To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors, and to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, and securities, and other valuable and personal property, and to collect coupons, interest, and dividends on said above described securities, and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon."

Section 19. Section 16-2902, R.C.M. 1947, is amended to read as follows:

"**16-2902. What to be recorded.** He must, upon payment of his fees for the same, record, or photograph, or correctly copy, separately, in large and well-bound, or to be bound, separate books, either in a fair hand or by printing or by typewriting, or by photographic process, or by the use of prepared blank forms:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

2. Certificates of births and deaths;

3. Wills devising real estate admitted to probate;

4. Official bonds;

5. Transcripts of judgments which by law are made liens upon real estate;

6. Instruments describing or relating to the *individual* property of married *persons*, and sole trader judgments;

7. All orders and decrees made by the district court in probate matters affecting real estate which are required to be recorded;

8. Notice of pre-emption claims;

9. Notice and declaration of water rights;

10. Assignments for the benefit of creditors;

11. Affidavits of annual work done on mining claims;

12. Notices of mining locations and declaratory statement;

13. Estrays and lost property;

14. A book containing appraisement of state lands;

15. Such other writings as are required or permitted by law to be recorded; provided, nothing herein shall be construed as preventing the recording or photographing or copying of such instruments, separately, upon a single or loose page or pages of a book, if such page or pages shall immediately become a part of such book or volume, which, when com-

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pleted, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

Whenever the laws of the state of Montana require or permit any instrument to be recorded, such recording may be made in the manner or by any of the processes hereinbefore prescribed."

Section 20. Section 16-2905, R.C.M. 1947, is amended to read as follows:

"**16-2905. Indexes to be kept.** Every county clerk, as ex officio recorder, must keep:

1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers, or contracts," and "Where recorded";

3. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled";

4. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled";

5. An index of mortgages, labeled "Releases of mortgages of real property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of release," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

6. An index of powers of attorney, labeled "Powers of attorney," each page divided into five columns, headed respectively: "Names of parties executing powers," "To whom powers are executed," "Date of powers," "Date of recording," "To whom powers are executed";

7. An index of leases, labeled "Leases," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded";

8. An index of leases, labeled "Lessees," each page divided into four columns respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded";

9. An index of marriage certificates, labeled "Marriage certificate—Men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

10. An index of marriage certificates, labeled "Marriage certificates

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— Women," each page divided into six columns, headed respectively: "Women married," (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded";

11. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignment," "When and where recorded";

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—Assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments," "Date of assignments," "When and where recorded";

13. An index of wills, labeled "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded";

14. An index of official bonds, labeled "Official bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded";

15. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices, when filed";

16. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied";

17. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When filed," "When attachments discharged";

18. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively: "Parties to actions," "Notices, when recorded," "When filed";

19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled "Certificates of sale," each page divided into four columns, headed respectively: "Plaintiff," "Defendant," "Purchaser at sale," "Date of sale";

20. An index of the *individual* property of married *persons* and sole trader judgments labeled "*Individual* property of married *persons* and sole traders," each page divided into five columns, headed respectively: "Names of married *persons*," "Names of their *spouses*," "Nature of instruments recorded," "When recorded," "Where recorded";

21. An index to affidavits for annual work done on mining claims, showing the name of the affiant, the name of the claim, where situated,

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and the year when the work was done, labeled "Annual work on mining claims";

22. An index of mining claims and declaratory statements, labeled "Notices of location of mining claims and declaratory statements," each page divided into four columns, headed respectively: "Locators," "Name of claim," "Notice, when filed," "Where recorded";

23. An index to the register of births and deaths;

24. An index to notices and declarations of water rights;

25. An index to the "Estray and lost property book";

26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed;

27. An index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions.

28. A miscellaneous index, in which must be indexed papers not hereinbefore stated."

Section 21. Section 61-104, R.C.M. 1947, is amended to read as follows:

"61-104. Obligations of parents for the support and education of their children. The parent *or parents* entitled to the custody of a child must give him support and education suitable to his circumstances."

Section 22. Section 61-117, R.C.M. 1947, is amended to read as follows:

"61-117. Married person not bound for the support of his spouse's children by a former marriage. A *married person* is not bound to support his *spouse's* children by a former *marriage*; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services."

Section 23. Sections 36-102 and 36-121, R.C.M. 1947, are repealed.

Approved April 8, 1975.

CHAPTER NO. 294

AN ACT TO PROVIDE FOR A CYCLICAL PROGRAM FOR THE REVALUATION OF TAXABLE PROPERTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-429.14 that reads as follows:

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84-429.14. Periodic revaluation of taxable property. The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state of Montana at least every five (5) years. A comprehensive written plan of rotation shall be promulgated by the department of revenue fixing the order of revaluation of property in each county on the basis of the last revaluation of taxable property in each county prior to July 1, 1974, in order to adjust the disparities therein between the counties. The plan of rotation so adopted shall provide that all property in each county shall be revalued at least every five (5) years or that no less than twenty percent (20%) of the property in each county shall be revalued in each year. The department of revenue shall furnish a copy of the plan and all amendments thereto to each county assessor and the board of county commissioners in each county.

Section 2. There is a new R.C.M. section numbered 84-429.15 that reads as follows:

84-429.15. Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided.

Section 3. There is a new R.C.M. section numbered 84-429.16 that reads as follows:

84-429.16. Use of valuations. No program for the revaluation of property shall be implemented for taxation in any county, other than as prescribed in this act.

Section 4. There is a new R.C.M. section numbered 84-429.17 that reads as follows:

84-429.17. Act supplemental. This act is intended to be supplementary to and is not intended to repeal section 84-429.12, R.C.M. 1947.

Section 5. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 8, 1975.

CHAPTER NO. 295

AN ACT TO AMEND SECTION 50-1055, R.C.M. 1947, TO DEFINE PRIMA FACIE EVIDENCE OF INJURY TO AN OWNER'S WATER SUPPLY IN A DESIGNATED GROUND WATER AREA AND TO SHIFT BURDEN TO STRIP MINE OPERATOR IN A NONDESIGNATED AREA.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 50-1055, R.C.M. 1947, is amended to read as follows:

"50-1055. Mandamus to compel enforcement of law — action for damage to water supply — damage from surface water — other remedies. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(a) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal or disruption of overlying aquifer from designated "ground water areas" as prescribed in Title 89, chapter 29. If the area is not a designated "ground water area", a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to defendant (operator) to show that plaintiff's (owner's) water supply was not injured thereby.

(b) An owner of water rights adversely affected may file a complaint, detailing the loss in quality and quantity of his water, with the department. Upon receipt of this complaint the department shall:

(i) investigate the complaint using all available information including monitoring data gathered at the mine site;

(ii) require the defendant (operator) to install such monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

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(iii) issue, within ninety (90) days, a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(iv) order the mining operator in compliance with the water use act to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time replace the water in like quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

(v) order the suspension of the operator's permit, for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section."

Approved April 8, 1975.

CHAPTER NO. 296

AN ACT EXPANDING THE PROHIBITION AGAINST CORPORATE CONTRIBUTIONS TO PREVENT SUCH CONTRIBUTIONS IN SUPPORT OF OR IN OPPOSITION TO ISSUES; DELETING THE PROHIBITION PREVENTING MAJORITY STOCKHOLDERS FROM CONTRIBUTING TO POLITICAL CAMPAIGNS; AMENDING SECTION 23-4744; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4744, R.C.M. 1947, is amended to read as follows:

"**23-4744. Contributions from corporations, public utilities and others.** No corporation, bank, savings bank, co-operative bank, *savings and loan association,* trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery or crematory company, or any company having the right to take or condemn land, or to exercise franchises in public ways granted by the state or by any county, city, or town, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person, or in order to aid or promote the interests, success, or defeat of any political party, organization, *or ballot issue.* No person shall solicit or receive such payment or contribution from such corporation."

Section 2. There is a new R.C.M. section numbered 23-4744.1 that reads as follows:

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23-4744.1. Salary increase contribution prohibited. A corporation may not increase the salary of any officer or employee or give an emolument to any officer, employee or other person, with the intention that the increase in salary, or the emolument, or any part thereof, be contributed to support or oppose a candidate or ballot issue.

Section 3. This act is effective on January 1, 1976.

Approved April 8, 1975.

CHAPTER NO. 297

AN ACT TO DISALLOW CONSIDERATION OF ADVERTISING EXPENSES AND CONTRIBUTIONS IN SETTING RATES CHARGED BY PUBLIC UTILITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 70-121.1 that reads as follows:

70-121.1. Advertising and contributions. Costs or expenses incurred by public utilities for advertising, for transfers of funds without full and adequate consideration, for contributions, for donations, and for gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates which may be charged by the public utilities, pursuant to Title 70, R.C.M. 1947. This act shall not apply to advertising which encourages the conservation of energy, product safety, or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section shall not apply to advertising which relates to special equipment that is available to aid the handicapped or to special services that are designed to protect the public health, welfare and safety or promote more efficient use of a communications system.

Approved April 8, 1975.

CHAPTER NO. 298

AN ACT AMENDING SECTIONS 93-1301 AND 93-1402, R.C.M. 1947, TO PROVIDE THAT PERSONS QUALIFIED TO SERVE AS TRIAL JURORS BE SELECTED FROM THE LISTS OF REGISTERED VOTERS.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 93-1402, R.C.M. 1947, is amended to read as follows:

"**93-1402. Selection of persons qualified to serve as trial jurors.** At the meeting, specified in the last section, the officers present must select, from the *most recent list of all registered electors as prepared by the county registrar*, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in the last chapter. Each name so appearing on said list shall be assigned a number which shall be placed opposite the name on the jury list and shall be considered the number of the juror opposite whose name it appears. Said numbers shall be consecutive from "1" to the total number of jurors."

Section 2. Section 93-1301, R.C.M. 1947, is amended to read as follows:

"**93-1301. Who competent to act as juror.** A person is competent to act as a juror if *he is a registered elector whose name appears on the most recent list of all registered electors as prepared by the county registrar.*"

Approved April 8, 1975.

CHAPTER NO. 299

AN ACT TO AMEND SECTION 84-301, R.C.M. 1947, TO CLASSIFY BUSINESS INVENTORIES IN CLASS SEVEN (7) FOR THE PURPOSE OF PROPERTY TAXATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness,

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saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; furniture and fixtures used *in commercial activities;* and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

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In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

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(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. All property not included in the eight (8) preceding classes."

Approved April 8, 1975.

CHAPTER NO. 300

AN ACT TO AMEND SECTION 84-1901, R.C.M. 1947, RELATING TO THE DISPOSITION OF MONEYS FROM CERTAIN LICENSE AND OTHER TAXES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1901, R.C.M. 1947, is amended to read as follows:

"**84-1901. Disposition of moneys from certain designated license and other taxes.** *(1)* The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile drivers' license fees under section *31-135;*

(b) electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive;

(c) metalliferous mines license taxes under sections 84-2001 to *84-2016,* inclusive;

(d) telegraph license taxes under sections 84-2501 to 84-2508, inclusive;

(e) oil producers' license taxes under sections 84-2201 to 84-2211, inclusive;

(f) natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive;

(g) liquor license taxes under Title 4 ;

(h) telephone license taxes under sections 84-2601 to 84-2608, inclusive; *and*

(i) inheritance and estate taxes under *Title 91, chapter 44.*

(2) Seventy-five percent (75%) of all moneys received from the collection of income taxes under *Title 84, chapter 49,* corporation license taxes under *Title 84, chapter 15, and corporation income tax, Title 84, chapter 61, shall be deposited in the general fund* subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining twenty-five *percent* (25%) of the proceeds of the corporation license tax, *corporation income tax,* and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana Beer Act, sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the State Liquor Control Act, sections 4-101 to 4-237, inclusive *or as those sections may be renumbered or amended.*"

Approved April 8, 1975.

CHAPTER NO. 301

AN ACT TO AMEND SECTION 84-7012, R.C.M. 1947, TO PROVIDE FOR PENALTY, INTEREST AND TAX LIENS FOR FAILURE TO FILE A STATEMENT UNDER THE PROVISIONS OF THE MONTANA RESOURCE INDEMNITY TRUST ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-7012, R.C.M. 1947, is amended to read as follows:

"**84-7012. Procedure in case of failure to file statement — penalty — interest — tax lien.** *(1)* If any person shall fail, refuse or neglect to make and file a statement and return within the time prescribed, the department shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed

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with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid, *and shall determine and fix the amount of the tax due to the state from such person for such calendar year and shall add to the amount of such tax a penalty of ten percent (10%) thereof plus interest at the rate of one percent (1%) per month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.*

(2) The department shall mail to the person required to file an annual statement and pay any tax, a letter setting forth the amount of tax, penalty, and interest due. Upon receipt of this letter the person shall remit to the department the full amount of license tax, penalty and interest due within fifteen (15) days.

(3) The ten percent (10%) penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-7005 is provided to the department.

(4) The tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state, which lien shall attach on the date the state department of revenue files a duplicate of the statement so made by the department, or a certified copy of any statement filed by the department in the office of the county clerk in the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed and recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Approved April 8, 1975.

CHAPTER NO. 302

AN ACT TO AMEND SECTION 3-208, R.C.M. 1947, INCREASING THE HANDLING AND STORAGE CHARGES FOR GRAIN WHICH PUBLIC WAREHOUSEMEN MAY COLLECT; AND AMENDING PROVISIONS RELATING TO CHARGES FOR CLEANING, STORAGE, AND CHARGE REDUCTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-208, R.C.M. 1947, is amended to read as follows:

"3-208. Charges of public warehousemen. (1) Public warehousemen subject to this chapter, for the handling, cleaning and storage of grain, may charge:

(a) Not more than *eight* cents *(8¢)* per bushel for receiving, elevating,

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weighing, and immediate delivery on car of the identical grain without mixing. Immediate delivery means that the total period of assemblage and delivery does not exceed seventy-two (72) hours.

(b) Not *more than eight* cents *(8¢)* per bushel, for all grains except flax, for receiving, grading, weighing, elevating, insuring, *and delivery to the owner.* For flax this charge *is not more than ten cents (10¢)* per bushel.

(c) Not more than *ten* cents *(10¢)* per bushel for cleaning grain where there are cleaning facilities *except for seed cleaning*, in which case screenings shall be delivered to the owner at his request.

(d) One-twentieth *(1/20)* of one cent (.01) per bushel for each day in storage after *the* period of free storage has elapsed. The first fifteen (15) days of storage shall be without charge.

(2) A twenty-five per cent (25%) reduction for the above charges shall be allowed when the market price of wheat sold at point of origin is at time of sale less than two dollars and five cents ($2.05) per bushel.

(3) The schedule of charges for cleaning shall be posted in a conspicuous place where grain is unloaded for cleaning.

(4) Failure on the part of a public warehouseman to comply with this chapter renders the licenses of the warehouseman subject to revocation by the department."

Approved April 8, 1975.

CHAPTER NO. 303

AN ACT TO PROVIDE FOR THE TRANSFER OF REAL AND PERSONAL PROPERTY HELD IN JOINT TENANCY BY HUSBANDS AND WIVES WITHOUT COURT PROCEDURES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 91-4321.1 that reads as follows:

91-4321.1. Joint tenancy property — transfer to surviving spouse. (1) Title to property held in joint tenancy by a husband and wife with the right of survivorship shall, upon the death of one of the spouses, vest in the surviving spouse provided the requirements of this section have been complied with.

(2) Proof of death of one of the spouses may be made by filing a copy of the death certificate with the department of revenue.

(3) The surviving spouse shall file an affidavit in form prescribed by the department of revenue with the department of revenue listing all interests in real and personal property held in joint tenancy with the deceased spouse.

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(4) The surviving spouse shall send a list of all properties or interest therein (and the value thereof as of the date of the deceased spouse's death) held in joint tenancy with the deceased spouse to the department of revenue.

(5) Joint tenancies in real property with right of survivorship may be created by spouses by deed or by filing a form with the county clerk and recorder signed by both spouses and attested to by an officer authorized to administer oaths. Proof of creation of joint tenancies in personal property may be made by submitting to the department of revenue copies, or other evidence, of any documents which created such joint tenancies.

(6) Upon submission of copies of the documents required in subsections (2), (3), (4), and (5) of this section the department of revenue shall determine the inheritance tax due and send a certificate of tax due to the surviving spouse. If there is no tax due the certificate shall be filed with the county clerk and recorder who shall then issue a transfer of title for any real property involved to the surviving spouse. If there is tax due, upon its payment to the county treasurer and filing the receipt therefor with the county clerk and recorder, the clerk and recorder shall transfer title in the real property to the surviving spouse. The certificate of no tax due from the department of revenue or the receipt from the county treasurer for taxes paid is sufficient for the surviving spouse to transfer title to any personal property involved.

(7) No surviving spouse is required to hire an attorney to transfer title in the joint tenancy property. If an attorney is hired by the surviving spouse the attorney's fees, including expenses, shall not exceed two percent (2%) of the value of the interest passing to the surviving spouse.

Section 2. Section 91A-3-1205, R.C.M. 1947, shall apply only to the termination of joint tenancies between unmarried persons.

Approved April 8, 1975.

CHAPTER NO. 304

AN ACT TO REMOVE THE COUNTY AUTHORITY TO INVEST SCHOOL DISTRICT FUNDS UNDER THE PROVISIONS OF SECTIONS 16-2050 AND 16-2618, R.C.M. 1947, AND TO PRESCRIBE THE LIMITATIONS FOR SCHOOL DISTRICT INVESTMENTS UNDER SECTION 75-6806, R.C.M. 1947; AMENDING SECTIONS 16-2050, 16-2618, 75-6805, AND 75-6806, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2050, R.C.M. 1947, is amended to read as follows:

"16-2050. Investment of special moneys in county warrants and investment of school district or county high school moneys. (1)

Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of subsection (6) of section 16-2618.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the said county high school, provided that in the event construction of said buildings is delayed for a period longer than six (6) months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county or county high school moneys under the state unified investment program established in Title 79, chapter 3."

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Section 2. Section 16-2618, R.C.M. 1947, is amended to read as follows:

"**16-2618. Deposit of public funds by county, city and town treasurers.** (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent banks, building and loan associations or savings and loan associations located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank, building and loan association or savings and loan association such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank, building and loan association or savings and loan association authorized hereinabove in a savings or time deposit; provided that the bank or banks or building and loan association or savings and loan association in which the money is deposited shall pay on the moneys no less than the rate of interest as is paid on money from private sources on the same terms. Refusal of any bank, building and loan association or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the ratable distribution of said moneys as set forth in subsection (4) of this act, and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted

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on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the department of intergovernmental relations. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) (a) Demand deposits shall be placed only in banks. When more than one bank is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such demand deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such demand deposits shall be maintained.

(b) Such public moneys not necessary for immediate use by such county, city or town which are not invested in direct obligations of the United States government as authorized herein shall be placed in time or savings deposits with any bank, building and loan association or savings and loan association in the county, city or town. When more than one bank, building and loan association or savings and loan association is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such funds shall be distributed ratably among all of such banks, building and loan associations and savings and loan associations qualifying therefor, substantially in proportion to the total property taxes paid in such county or the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association willing to receive such time or savings deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such time or savings deposits among all of the banks, building and loan associations and savings and loan associations qualified to receive the same as in this act provided, to the end that an equitable distribution of such time or savings deposits shall be maintained.

(5) Whenever it shall come to the attention of the department of intergovernmental relations that the funds of any county, city or town are not properly distributed as provided in this act, the department of intergovernmental relations shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer

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shall refuse or neglect to comply with such order, it shall be the duty of the department of intergovernmental relations to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank, building and loan associations or savings and loan associations exists in the county, city or town, or if any banks, building and loan associations or savings and loan associations existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any banks, building and loan associations or savings and loan associations within said county, city or town, shall be deposited under the terms of this act, in the banks, building and loan associations or savings and loan associations most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any banks, building and loan associations or savings and loan associations receiving such deposits, shall, through its president and cashier or secretary, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank, building and loan association or savings and loan association during the quarter, the amount of daily balance in dollars, and the amount of interest by such banks, building and loan associations or savings and loan associations credited or paid therefor, and showing that neither such bank, building and loan association or savings and loan association nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank, building and loan association or savings and loan association. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, building and loan association or savings and loan association, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) *All* interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank, building and loan association or savings and loan association pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the deposi-

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tory bank, building and loan association or savings and loan association, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank, building and loan association or savings and loan association."

Section 3. Section 75-6805, R.C.M. 1947, is amended to read as follows:

"**75-6805. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school moneys subject to apportionment, and keep a separate accounting of their apportionments to the several districts which are entitled to a portion of such moneys according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a county-wide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs,

(b) the basic special tax for high schools in support of the high school foundation programs,

(c) the county tax in support of the county's high school transportation obligation,

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana,

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs,

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs,

(g) the county tax for a post-secondary vocational-technical center when levied by the board of county commissioners, and

(h) any other county tax for schools which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent of the amount of county school moneys on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school moneys subject to apportionment, and apportion such county and other school moneys to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school moneys and properly endorsed by their holders;

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(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law, or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied;

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than the fifteenth day of December of each year and every three (3) months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with section 16-2604, R. C. M., 1947, when there are insufficient moneys available in such budgeted fund to make payment of such warrant. Redemption of registered warrants shall be made in accordance with sections 16-2605, 16-2602, and 16-2607, R. C. M., 1947;

(9) invest the moneys of any district as directed by the trustees of the district; and

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district showing the paid warrants, outstanding warrants, registered warrants, amount and types of revenue received, and the cash balance."

Section 4. Section 75-6806, R.C.M. 1947, is amended to read as follows:

"**75-6806. Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person, other than the trustees, acting as a governing board, shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules and regulations prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees;

(2) authorize all expenditures of district moneys, and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district whenever in the judgment of the trustees such investment would be advantageous to the district, *by directing the county treasurer to invest any money of the district in savings or time deposits in a state or national bank, building or loan association or savings and loan association insured by the F.D.I.C. or the F.S.L.I.C. located in the county in which the district is located, provided however that*

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if no such bank, building and loan association or savings and loan association is located in the county where the district is situated such investment may be made in said banks or associations located in adjacent counties or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund, or the building fund at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 79, chapter 3, R.C.M. 1947;

(5) report annually to the county superintendent not later than the first day of August, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated;

(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Approved April 8, 1975.

CHAPTER NO. 305

AN ACT PROHIBITING WATERCRAFT FROM DISCHARGING ANY WASTEWATER INTO BODIES OF WATER AND PROVIDING PENALTIES; AMENDING SECTION 69-3505 AND REPEALING SECTION 69-3508.2, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3505, R.C.M. 1947, is amended to read as follows:

"**69-3505. Equipment.** (1) Every motorboat or vessel shall have aboard:

(a) One United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided, that

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any person who has not reached his twelfth birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under twenty-six (26) feet in length while such motorboat or vessel is in motion. The fish and game commission shall have the authority to designate waters and time of year on these waters where all persons aboard a motorboat or vessel must wear approved life preservers at all times.

(b) When in operation or at anchor or moored away from a docking facility between sunset and sunrise all vessels shall display lights as prescribed by the board.

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system prescribed by the board which shall be used and be capable of removing resulting gases prior to, and during the time the motorboat or vessel is occupied by a person.

(d) All motorboats shall carry the minimum number of United States coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a United States coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) The board may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(4) A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(5) A vessel, *including houseboats and floating cabins,* may not be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage may be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the board of health and environmental sciences.

Vessels, including houseboats and floating cabins, equipped with a galley or toilet shall have, not later than April 30, 1976, a wastewater holding system sealed to prevent the discharge of sewage as defined in section 69-4802, R.C.M. 1947, whether treated or untreated, into the surrounding waters."

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Section 2. Section 69-3508.2, R.C.M. 1947, is repealed.

Approved April 8, 1975.

CHAPTER NO. 306

AN ACT TO AMEND SECTION 69-3503, R.C.M. 1947, TO REQUIRE THAT ALL MOTORBOATS BE PROPERLY NUMBERED AND DISPLAY VALID LICENSE DECALS; AND PROVIDING A PENALTY FOR FAILING TO PROPERLY DISPLAY NUMBERS AND LICENSE DECALS FOR A MOTORBOAT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3503, R.C.M. 1947, is amended to read as follows:

"**69-3503. Operation of unnumbered motorboats prohibited — display of decals.** *(1)* Every motorboat on the waters of this state propelled by motor or engine of any description shall be properly numbered and display valid license decals. No person shall operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this act, in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, unless (1) the certificate of number awarded to such motorboat is in full force and effect, and (2) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

(2) Any person who operates a motorboat on the waters of this state without displaying the appropriate numbers and license decals as required by this section shall be punishable by a fine not to exceed ten dollars ($10). However, the arresting officer may issue a courtesy citation in lieu of the penalty provided for in this subsection."

Approved April 8, 1975.

CHAPTER NO. 307

AN ACT AMENDING SECTION 89-1301, R.C.M. 1947, TO INCREASE THE AMOUNT THAT MAY BE SPENT FOR THE PURCHASE OF EQUIPMENT RELATING TO IRRIGATION DISTRICTS FROM TWENTY-FIVE THOUSAND DOLLARS ($25,000) TO EIGHTY THOUSAND DOLLARS ($80,000).

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-1301, R.C.M. 1947, is amended to read as follows:

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"89-1301. **Powers and duties of commissioners.** The board of commissioners of every irrigation district established and organized under and by virtue of this act shall constitute the corporate authority of said district.

(1) The board shall have the power, and it shall be the duty of the members thereof, to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required, and prescribe their duties.

(2) The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works, including drainage works and the line for any canal or canals, and necessary branches for the same, on any lands which in the judgment of the board may be deemed best suited for such location.

(3) The board shall have power and authority to appropriate water in the name of the district, to acquire by purchase, lease, or contract, water and water rights; additional waters and supplies of water, canals, reservoirs, dams and other works already constructed, or in the course of construction, with the privilege, if desired, to contract with the owner, or owners of such canals, reservoirs, dams and other works so purchased and in the course of construction, for the completion thereof and shall also have power and authority to acquire by purchase, lease, contract, condemnation, or other legal means, lands (and rights in lands) for rights of way, for reservoirs, for the storage of needful waters, and for dam sites, and necessary appurtenances, and such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement and operation of any district system of irrigation works.

(4) The board shall have power and authority to enter into, and do any acts necessary or proper for the performance of any agreements with any state, county, district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair, or operation of any rights, works or other property of a kind which might lawfully be acquired or owned by the irrigation district, and may acquire the right to store water in any reservoirs or to carry water through any canal, ditch, or conduit not owned or controlled by the district, and may grant to any owner or lessee of the right to the use of any water the right to store such water in any reservoir of the district or to carry such water through any canal, ditch or conduit of the district.

(5) But no purchase, lease or contract for purchase of any water, or water rights, or canals, or reservoirs, or reservoir sites, or dam sites, or irrigation works or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates and specifications, or for the purchase of machinery for pumping plants, or the erection of buildings, aqueducts and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of *eighty thousand dollars ($80,000)*, shall be final or binding upon the district, nor shall said

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sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts absolutely null and void.

(6) For the purpose of acquiring control over government land within the district and of complying with the provisions of the act of Congress of August 11, 1916, the board shall have authority to make such investigations, and base thereon such representations and assurances to the secretary of the interior, as may be requisite.

(7) The board may enter into any obligation or contract with the United States for the construction, operation, and maintenance of the necessary works for the delivery and distribution of water therefrom, and of the necessary drainage works; or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands, under the provisions of the Federal Reclamation Act and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any act of Congress providing for or permitting such contract, and in case contract has been or may hereafter be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds of the district and regularly paid to the United States to be applied as provided in such contract, and if bonds of the district are not so deposited, it shall be the duty of the board of commissioners to include as part of any levy or assessment provided for in section 89-1801, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept, on behalf of the district, appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of moneys for or on behalf of the United States in connection with any federal reclamation project, whereupon the district shall be authorized to so act and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the federal statutes now or hereafter enacted in connection therewith, and all things required by the rules and regulations now or that may hereafter be established by any department of the federal government in regard thereto, including the power to require the prompt payment of all charges as prerequisite to water service.

(8) Said board may also construct and maintain the necessary dams, reservoirs, and works for the collection and distribution of water for the district, from one or more sources and from different and additional sources, and operate such works, and may secure in any of the manners in this act provided additional water supplies from the same or different sources, and do any and every lawful act necessary to be done in order that sufficient water may be furnished for irrigation purposes to all the lands in the district included at the time of its organization or at any time thereafter.

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(9) The board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of the district, to and for the uses and purposes herein expressed.

(10) The board is hereby authorized and empowered to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this act, or acquired in pursuance thereof, and in all courts, suits, or proceedings, the said board may sue, appear, and defend in person or by attorneys, and in the name of such irrigation district.

(11) The board may adopt rules and bylaws governing the calling and holding of meetings of the board, the manner of transacting business thereat, and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt bylaws, rules and regulations for the apportionment and distribution of water to the lands of the district, and for the protection and preservation of the works and other property of the district, which shall be printed in convenient form for distribution in the district; and may therein require the prompt payment of all taxes and assessments delinquent for not to exceed two years as a prerequisite to water service. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board.

(12) For the purpose of purchasing or constructing the necessary irrigation canals or works, or acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of commissioners of any irrigation district must, as soon after such district has been organized as practicable, formulate a general plan for such purchase, construction, and acquisition of such property, and shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plans, as well as of procuring water from other and different sources, the amount of land that can be irrigated thereunder, and furnish the proper basis for an estimate of the cost of carrying out such plan and the value of any canal, works, property, or system of irrigation proposed to be purchased. All such surveys, examinations, maps, plans, and estimates shall be made by or under the direction and supervision of an irrigation engineer of well-known standing and competency, and all such necessary surveys, examinations, maps, plans and estimates must be certified to by him. When all such are completed, he shall submit them with all proper field notes to, and file them with, the board of commissioners, accompanied by his report and recommendation thereon. This report shall include a discussion of said plans by him submitted to said board, of the question of water supply, of the sufficiency of the works proposed to accomplish the desired results, of the practicability of the proposed system from an engineering standpoint, of the probability of being acquired or constructed within the estimate of the cost stated, and such general discussion and recommendation in regard to the engineering and financial features of the whole matter as in the judgment of such engineer shall be desirable for the information of the people of the district.

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Such report shall be accompanied by a map, when such is necessary for a proper explanation or understanding of the same.

Upon receiving such report, said board of commissioners shall proceed to determine the amount of money necessary to be raised for the purchase or construction of said proposed property, canals, or irrigation works, and system, and within ten days after arriving at such determination shall cause the secretary of said board to notify all persons or corporations holding title or evidence of title to lands within said district (ascertained as provided in section 89-1201) of the filing of said report and their determination thereon. Said notices shall be given through the United States mail by letter addressed to such person or corporation at the last known post-office address of each person or corporation aforesaid. A certificate of the secretary of the board as to the fact of mailing said notice, affixed to a copy of said notice and recorded in the record book of said board of commissioners, shall be sufficient and conclusive evidence of such fact.

(13) Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this act."

Approved April 8, 1975.

CHAPTER NO. 308

AN ACT TO REQUIRE CITIES OF ALL CLASSES TO PAY FULL PREMIUM FOR INSURANCE PROVIDED UNDER SECTION 11-1024, R.C.M. 1947, TO POLICE IN THE RESPECTIVE CITIES, AND TO PROVIDE AUTHORITY TO RAISE THE LOCAL MILL LEVY IF NECESSARY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1024.1 that reads as follows:

11-1024.1. Group insurance for policemen — payment of premium. Cities of all classes, if they provide insurance for other city employees under section 11-1024 shall:

(1) provide the same insurance to their respective policemen;

(2) notwithstanding section 11-1024, pay the full premium of each policeman's insurance coverage for the policeman and his dependents.

Section 2. There is a new R.C.M. section numbered 11-1024.2 that reads as follows:

11-1024.2. Funding. In compliance with section 43-517, the administration of this act is declared a public purpose of a city which may be paid out of the general fund of the governing body and financed by a levy not to exceed two (2) mills on the taxable value of property within the city or town.

Approved April 8, 1975.

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CHAPTER NO. 309

AN ACT TO PROVIDE FOR THE COMPUTATION OF AN EMPLOYEE'S SICK LEAVE BASED UPON THE EMPLOYEE'S SALARY AT THE TIME OF TERMINATION OF EMPLOYMENT; AMENDING SECTION 59-1008, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1008, R.C.M. 1947, is amended to read as follows:

"**59-1008. Sick leave.** (1) Each full-time employee of the state, or of any county or city thereof, is entitled to and shall earn sick leave credits from the first full pay period of employment. For calculating sick leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate sick leave credits shall be earned and credited at the end of each pay period. Sick leave credits shall be earned at the rate of twelve (12) working days for each year of service without restriction as to the number of working days he may accumulate.

(2) An employee may not accrue sick leave credits during a continuous leave of absence without pay, which exceeds fifteen (15) calendar days. Employees are not entitled to be paid for sick leave under the provisions of this act until they have been continuously employed for ninety (90) days. Upon completion of the qualifying period, the employee is entitled to the sick leave credits he has earned.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have a regularly scheduled work assignment, and normally work at least twenty (20) hours each week of the pay period, and have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the state or of any county or city thereof, is entitled to a lump-sum payment equal to one-fourth (¼) of the pay attributed to *the* accumulated sick leave. The pay attributed to *the* accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time *he terminates his employment with the state, county, or city.* Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971, and the payment therefor, shall be the responsibility of the state, or any county or city thereof, wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same state, county or city jurisdiction he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

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(6) An employee of the state or any county or city thereof who receives a lump-sum payment pursuant to this act and who is again employed by the state or a county or city thereof shall not be credited with any sick leave for which he has previously been compensated.

(7) The department of administration of the state of Montana or the administrative office of any county or city thereof shall be responsible for the proper administration of sick leave and shall promulgate such rules and regulations as it deems necessary to achieve the uniform administration of sick leave and to prevent the abuse thereof. When promulgated these rules and regulations are effective as to all employees of the state of Montana or any county or city thereof.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this act."

Approved April 8, 1975.

CHAPTER NO. 310

AN ACT AMENDING SECTIONS 16-4506 AND 16-4507 RELATING TO THE NOMINATION AND ELECTION OF THE BOARD OF DIRECTORS OF A COUNTY WATER OR SEWER DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4506, R.C.M. 1947, is amended to read as follows:

"**16-4506. Election of directors — term of office.** At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members, *or three (3) members if there are ten (10) or less qualified electors in the district.* In all cases where the boundaries of such district include any municipality or municipalities, said board of directors, in addition to said five (5) *or three (3)* directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said district, one additional director, to be appointed by the board of commissioners of each county containing such territory. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the direc-

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tors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special district election."

Section 2. Section 16-4507, R.C.M. 1947, is amended to read as follows:

"**16-4507. Nomination of officers.** (1) The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than *five (5)* individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION
Individual Certificate

State of ....
County of ....

Prect. No. ....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ...., whose residence is at .... for the office of .... of the .... district to be voted for at the district election to be held in the .... district on the .... day of ...., 19..; and I further certify that I am a qualified elector and an owner or lessee of real property within said district, or a resident therein, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in the case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. .... street, ..., and that my occupation is ....

(Signed) .....

State of Montana
County of ....

...., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) .....

Subscribed and sworn to before me this .... day of ...., 19...

.....
Notary Public

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The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to ...., at ...., Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the county clerk whose county contains the largest percentage of the territory of said district shall fulfill this function.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector owning or leasing or residing upon real property within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than *five (5)* individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

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(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in each county in which such district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION
.....District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at district election, as provided for

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under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said district.

(22) Informality not to invalidate. No informality in conducting district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act."

Approved April 8, 1975.

CHAPTER NO. 311

AN ACT AUTHORIZING THE GOVERNING BODIES OF COUNTIES, CITIES, OR TOWNS TO LEVY UP TO ONE (1) MILL UPON THE ASSESSED VALUE OF ALL TAXABLE PROPERTY IN THE COUNTY, CITY, OR TOWN FOR THE PURPOSE OF ECONOMIC DEVELOPMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-4111 that reads as follows:

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11-4111. Levy authorized — uses — restrictions. (1) Upon an affirmative vote of a majority of the qualified voters voting in a city, county, or town on the question of whether the governing body may levy a tax for economic development, the governing body of that city, county, or town is authorized to levy up to one (1) mill upon the assessed value of all the taxable property in the county, city, or town for the purpose of economic development, for a period not to exceed five (5) years, by any one election.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant nor to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies, and other associations or organizations capable of implementing the economic development function.

Approved April 8, 1975.

CHAPTER NO. 312

AN ACT TO REQUIRE A JUDICIAL DESIGNATION OF CERTAIN FELONY OFFENDERS AS PERSISTENT FELONY OFFENDERS FOR PURPOSES OF PAROLE ELIGIBILITY; TO EQUALIZE GOODTIME ALLOWANCES FOR ALL OFFENDERS; TO ALLOW INMATES GOOD TIME FOR DESIGNATED SELF-IMPROVEMENT ACTIVITIES; AMENDING SECTIONS 80-1905, 95-3214, AND 95-3215, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1905, R.C.M. 1947, is amended to read as follows:

"80-1905. Good time allowance — forfeiture — probationers and parolees — application of prior law. (1) The state department of institutions shall adopt rules and regulations providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. *The* rules adopted by the department may not grant good time allowance to exceed:

(a) ten (10) days per month for inmates assigned within the confines of the walls of the prison;

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(b) thirteen (13) days per month for those inmates placed outside the confines of the walls of the prison;

(c) fifteen (15) days per month for those inmates who have been assigned outside the walls of the prison for an uninterrupted period of one year on a minimum status;

(d) thirteen (13) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) ten (10) days for each pint of blood donated by an inmate;

(f) five (5) days per month for those inmates participating in self-improvement activities designated by the department of institutions.

(2) In the event of an attempted escape by an inmate, or a violation of the rules and regulations prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of institutions of any attempted escape or violation of rules and regulations on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) *This section applies* to all persons who are on probation or parole or eligible to be placed on probation or parole. No person convicted and sentenced before April 1, 1955, shall have his good time allowance reduced as a result of this section."

Section 2. There is a new R.C.M. section numbered 95-2206.5 that reads as follows:

95-2206.5. Judicial designation of persistent felony offenders for purposes of parole eligibility. (1) When an offender has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first, the sentencing court shall designate the offender a persistent felony offender for purposes of eligibility for parole under section 95-3214, provided:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of one (1) year could have been imposed; and

(b) less than five (5) years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction, or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(c) the offender was more than eighteen (18) years of age at the time of the commission of the present offense.

(2) A previous felony conviction shall not be considered for the purposes of this section if the offender has been pardoned on the grounds of innocence, or if the conviction had been set aside in any post-conviction hearing.

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(3) A judicial determination of persistent felony offender under this section may be made only when the conviction for the present offense occurs after July 1, 1975.

Section 3. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"**95-3214. Parole authority and procedure.** (1) The board shall release on parole, by appropriate order, any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided:

(a) That no convict serving a time sentence shall be paroled until he has served at least one-quarter (¼) of his full term, less good time allowances off, as provided in section 80-1905; except that *no* convict *designated a persistent felony offender under section 95-2206.5 may be paroled until he has served at least one-third (⅓) of his full term, less good time allowances off, as provided in section 80-1905. A first offender* serving a time sentence may be paroled after he has served, upon his term of sentence, twelve and one-half (12 ½) years. *A persistent felony offender as defined in section 95-2206.5 may be paroled after he has served, upon his term of sentence, seventeen and one-half (17 ½) years.*

(b) No convict serving a life sentence shall be paroled until he has served *thirty (30)* years, less the good time allowances off, as provided in section 80-1905.

(2) Within two (2) months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of and physical and mental examinations which have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

(4) The board may adopt other rules it considers proper or necessary, with respect to the eligibility of prisoners for parole, and the conduct of parole hearings or conditions to be imposed upon parolees. When an order for parole is issued it shall recite the conditions thereof."

Section 4. Section 95-3215, R.C.M. 1947, is amended to read as follows:

"**95-3215. Conditional release.** A prisoner on parole who has served one-fourth (¼) of his term or terms, less good time allowances, *or a persistent felony offender who has served one-third (⅓) of his term or terms,*

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less good time allowances, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less good time allowances as provided in section 80-1905."

Approved April 8, 1975.

CHAPTER NO. 313

AN ACT TO AMEND SECTION 50-1216, R.C.M. 1947; TO ALLOW CERTAIN PARTIES TO PARTICIPATE IN PROCEEDINGS CONDUCTED PURSUANT TO THE RECLAMATION OF MINING LANDS ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1216, R.C.M. 1947, is amended to read as follows:

"**50-1216. Administrative remedies — parties.** All hearings and appeal procedures shall be in accordance with the Administrative Procedure Act. *Any person whose interests may be adversely affected as a result of an action taken pursuant to this act may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed."*

Approved April 8, 1975.

CHAPTER NO. 314

AN ACT AMENDING SECTION 32-1123.3, R.C.M. 1947, TO INCREASE THE ALLOWED WIDTH OF VEHICLES HAULING HAY ON THE HIGHWAYS IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1123.3, R.C.M. 1947, is amended to read as follows:

"**32-1123.3. Width.** A vehicle, unladen or with load, may not have a total outside width in excess of one hundred two (102) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches. This bus width is allowed only on paved highways twenty (20) feet or more in width. This restriction does not apply to an implement of husbandry *or a vehicle used for hauling hay* moved or propelled upon the highway during daylight hours for a distance of not more than one hundred (100) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry *or the vehicle used*

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for hauling hay. If the implement of husbandry *or the vehicle used for hauling hay* has a width in excess of twelve (12) feet, it shall be preceded by flagmen escorts for the purpose of warning other highway users; provided, however, that this restriction does not apply to dual wheel tractors under fifteen (15) feet overall width which are used in farming operations. The rear of such an implement of husbandry *or vehicle used for hauling hay* shall properly display lights which meet standard requirements in section 32-21-134, R.C.M. 1947. However, if the highway passes through a hazardous area, such implements of husbandry *or vehicles used for hauling hay* must be preceded and followed by flagmen escorts."

Approved April 8, 1975.

CHAPTER NO. 315

AN ACT TO ESTABLISH A CENTRALIZED COMMUNICATIONS EQUIPMENT MAINTENANCE PROGRAM WITHIN THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR IMPLEMENTATION OF THIS ACT; AND AMENDING SECTION 82-3325, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-3325, R.C.M. 1947, is amended to read as follows:

"82-3325. Powers and duties of department of administration regarding communications. The department of administration shall:

(1) Provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points. The department shall adopt adequate rules for the use of any communications equipment and facilities now in use or hereafter made available;

(2) Exercise general supervision over all existing communications systems for all agencies of state government;

(3) Plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies;

(4) Approve standards and procedures for selection, acquisition, and operation of communication equipment;

(5) Insure that all communications equipment is properly maintained. The department is authorized to *establish a centralized maintenance program for all state communications equipment and to* contract the equip-

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ment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered;

(6) Provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(7) Provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the department may establish;

(8) Accept federal funds granted by Congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(9) Assist in providing interconnecting telecommunications relays among facilities of the educational broadcasting commission."

Section 2. There is a new R.C.M. section numbered 82-3325.1 that reads as follows:

82-3325.1. Transfer of funds, equipment, facilities, and employees. In order to provide for a centralized, economical, efficient and effective maintenance program for all state communications equipment and facilities and to ensure that needless duplication of efforts in this field do not occur, the department of administration may order such transfer of appropriated funds, custody and control of equipment and facilities and employees to the department as may be necessary to implement this program. Upon transfer, as authorized in this section, a credit account shall be established, in the name of the agency from which transfer is made, in the amount of funds appropriated and the market value of equipment and facilities. Such credit account shall be used to defray the costs of maintenance and repair as provided in section 82-3325(5).

Section 3. There is a new R.C.M. section numbered 82-3325.2 that reads as follows:

82-3325.2. Rights and privileges of employees transferred to department. The provisions of this act shall in no manner affect the rights or privileges of any employee transferred to the department of administration under the public employees' retirement system, the group insurance plan, or personnel system.

Approved April 8, 1975.

CHAPTER NO. 316

AN ACT AMENDING SECTION 46-801.2, R.C.M. 1947, TO PERMIT CATTLE USED AS RODEO STOCK TO BE ISSUED TRANSPORTATION PERMITS, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-801.2, R.C.M. 1947, is amended to read as follows:

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"**46-801.2. Inspection of livestock before change of ownership or removal from county — transportation permits.** (1) Except as otherwise provided in this act, it is unlawful to remove or cause to be removed from a county in this state any livestock, or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector, and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this act. The inspection must be made in daylight provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five (5) or less such animals.

(2) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained, or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this act.

(3) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been inspected for marks and brands by a state stock inspector and an inspection certificate for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market, as provided in this act.

(4) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this act, or where change of ownership has occurred or when moved under a market consignment permit shall have in his possession the certificate of inspection or market consignment permit issued in connection therewith, and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector or deputy state stock inspector at the request of either of them. Section 46-803 shall be extended to livestock transported or sold under the above-mentioned permits.

(5) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business, or where a purebred cow is being transported from county to county in this state by its owner for show purposes, and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed one (1) year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a perma-

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nent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a five dollar ($5) permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse.

Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes, and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector."

Section 2. Effective date. This act is effective on its passage and approval.

Approved April 8, 1975.

CHAPTER NO. 317

AN ACT DIRECTING THE DEPARTMENT OF NATURAL RESOURCES TO MAKE RECOMMENDATIONS AND PROPOSE LEGISLATION TO PROVIDE FOR THE CONTROL OF URANIUM SOLUTION EXTRACTION AND THE PROTECTION AND REHABILITATION OF LANDS AND WATERS AFFECTED BY URANIUM SOLUTION EXTRACTION; AND TO PROVIDE AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 50-1701 that reads as follows:

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50-1701. Statement of legislative findings and policy. The legislature, noting that the energy shortage has prompted a widespread search for energy resources; that there is substantially increased prospecting, exploration and land acquisition for uranium in Montana; that rising world prices make previously uneconomical uranium deposits economically recoverable; that many Montana uranium deposits are so deep or have such a configuration that economic recovery is only possible through extraction in-place; and that extraction and energy companies have shown interest in utilizing in-place leaching in Montana to recover uranium; and further noting that pilot projects involving solution extraction are being seriously undertaken in other states and that contamination of fresh water resources is occurring, finds that solution extraction of uranium constitutes a technologically feasible method of uranium extraction which threatens Montana's land and water resources to the detriment of existing and projected agricultural, recreational, domestic, and other uses. The legislature, pursuant to its mandate and authority under Article IX of the Montana constitution declares that it is the policy of the state to provide for the protection of the lands and waters of the state and therefore to make provisions for the control of uranium solution extraction and rehabilitation of lands and waters affected by this extraction.

Section 2. There is a new R.C.M. section numbered 50-1702 that reads as follows:

50-1702. Definitions. Unless the context clearly requires otherwise, in this act:

(1) "department" means the department of natural resources and conservation;

(2) "solution extraction" means any part of the process followed in the extraction of uranium by injection of a solvent into zones below the earth's surface and subsequent withdrawal of the solution and processing of uranium;

(3) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision or agency of the state;

(4) "operation" means all of the premises, facilities, railroad loops or spurs, roads, injection or extraction wells, associated facilities, equipment, or any other surface or subsurface disturbance associated with or used in the process of solution extraction and processing uranium from a designated area.

Section 3. There is a new R.C.M. section numbered 50-1703 that reads as follows:

50-1703. Review by department. (1) The department shall review its authority and the authority of other state and federal agencies to control or regulate solution extraction of uranium.

(2) Upon completion of the review, the department shall prepare a report and make recommendations to the governor and to the 1977 legislature to accomplish the policy set forth in this act.

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Section 4. There is a new R.C.M. section numbered 50-1704 that reads as follows:

50-1704. Suspension of action. No person may propose, initiate construction of or in any way undertake an operation for the purpose of solution extraction of uranium for a period of two (2) years from the effective date of this act.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** This act is effective upon its passage and approval.

Approved April 8, 1975.

CHAPTER NO. 318

AN ACT AMENDING SECTIONS 92-116.1, 92-902, AND 92-1005, R.C.M. 1947, BY REMOVING SPECIFIC STATUTORY ASSESSMENT AMOUNTS FOR ADMINISTRATIVE COSTS AGAINST SELF-INSURERS AND PRIVATE INSURERS UNDER THE WORKMEN'S COMPENSATION ACT AND GRANTING TO THE DIVISION OF WORKMEN'S COMPENSATION THE AUTHORITY TO ASSESS ALL PLAN NO. 1 EMPLOYERS AND INSURERS AN ASSESSMENT BASED ON AN EQUITABLE FORMULA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-116.1, R.C.M. 1947, is amended to read as follows:

"**92-116.1. Administration fund.** *(1)* There is hereby established in the state treasury a workmen's compensation administration fund out of which all costs of administering the Workmen's Compensation and Occupational Disease *Acts* and *the various occupational safety acts the division must administer* are to be paid upon lawful appropriation. The following moneys collected by the workmen's compensation division shall be deposited in the state treasury to the credit of the workmen's compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in sections 92-119, 92-820, and 92-1358;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll

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of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the act, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than two hundred dollars ($200). The assessments shall be sufficient to fund the direct costs identified to the three (3) plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue including unexpended funds from the preceding fiscal year shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this act, including the salaries of its members, officers and employees, and the actual and necessary traveling expenses and disbursements of such members, officers and employees, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration moneys shall be made after being approved by the division upon claim therefor."

Section 2. Section 92-902, R.C.M. 1947, is amended to read as follows:

"**92-902. Proof of solvency of employer electing plan No. 1 to be filed — payroll assessments.** Every employer who has elected to be bound by compensation plan No. 1, shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the division."

Section 3. Section 92-1005, R.C.M. 1947, is amended to read as follows:

"**92-1005. Policies made subject to this act — assessment of insurers.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms shall have been approved by the *division*, and as otherwise provided by law."

Approved April 8, 1975.

CHAPTER NO. 319

AN ACT TO PROVIDE FOR THE REGULATION OF NONPROFIT HEALTH SERVICE CORPORATIONS; AND AMENDING SECTION 15-2304, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 40-5901 that reads as follows:

40-5901. Definitions. As used in this act:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary;

(2) "Health services" means the health care and services provided by hospitals, or other health care institutions, organizations, associations or groups, and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry and podiatry, nursing services, medical appliances, equipment and supplies, drugs, medicines, ambulance services, and other therapeutic services and supplies;

(3) "Membership contract" means any agreement, contract or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries;

(4) "Commissioner" means the commissioner of insurance of the state of Montana.

Section 2. There is a new R.C.M. section numbered 40-5902 that reads as follows:

40-5902. Application of this act — construction of other related laws. (1) All health service corporations heretofore or hereafter organized are subject to the provisions of this act.

(2) A law of this state other than the provisions of this act applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this act, the latter shall prevail.

Section 3. There is a new R.C.M. section numbered 40-5903 that reads as follows:

40-5903. Purposes of health service corporation. A health service corporation may be organized for the purposes of:

(1) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; or

(2) acting as agent or intermediary for other health service corporations, for governmental body or agency, or for other corporations, associations, partnerships or individuals in the field of health care and services; and

(3) research, education or related activity to further objects within the purview of this act.

Section 4. There is a new R.C.M. section numbered 40-5904 that reads as follows:

40-5904. No profit organization may be a health service corpora-

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tion. No group, association, or organization created for or engaged in business or activity for profit, provision for the incorporation of which is made by any of the corporation laws of this state, may be organized or operated, directly or indirectly, as a health service corporation under this act.

Section 5. There is a new R.C.M. section numbered 40-5905 that reads as follows:

40-5905. Financial security. (1) The corporation shall maintain at all times, unobligated funds adequate to:

(a) provide the hospital, medical-surgical and other health services made available to its members and beneficiaries, and

(b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States or other assets approved by the commissioner shall be maintained in an amount not less than:

(a) five hundred thousand dollars ($500,000); or

(b) an amount equal to one (1) month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding twelve (12) months, whichever is less.

If the reserves are not equal to the average in (2)(b), they must have been increased during the preceding twelve (12) months by an amount equal to one percent (1%) of the gross dues or fee income during that period. The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers. The commissioner may decrease or suspend the requirements of this section if he finds that the action is in the best interest of the members of the corporation.

Section 6. There is a new R.C.M. section numbered 40-5906 that reads as follows:

40-5906. Forms — filing. (1) A copy of all forms of the membership contract or any type of endorsement or rider shall be filed with the commissioner within thirty (30) days after that form is first used. When a form does not comply with the requirements of this act, the commissioner shall notify the corporation in writing of that failure and include the reasons for his opinion. Unless the corporation requests a hearing within ten (10) days, notice by the commissioner disallows use of this form by the corporation. If the corporation challenges the commissioner's disallowance of a form it shall request a hearing on that issue. The commissioner shall schedule a hearing as soon as practicable but not less than fifteen (15) days from the date of the request. If the commissioner finds, after the hearing, that the form is not in compliance with this act he may disapprove the form and issue a final order to that effect. Notice of disapproval, including the grounds for disapproval, shall be presented to the corporation not less than thirty (30) days after the hearing. The final order is effective thirty (30) days after the hearing.

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(2) A corporation whose forms have been ordered discontinued by the commissioner, may appeal, within fifteen (15) days after an order, to a district court of the state. The court, upon filing of the proper petition, shall cause the forms and orders of the commissioner to be brought before it, and upon hearing of the case, the court shall either affirm, or reverse and vacate the order of the commissioner.

(3) The court may suspend or stay a final order of the commissioner under this section, pending trial of the issues or the appeal.

Section 7. There is a new R.C.M. section numbered 40-5907 that reads as follows:

40-5907. Allowed contracts. A corporation subject to the provisions of this act may enter into contracts for the rendering of health services on behalf of its members or beneficiaries with:

(1) hospitals maintained by a governmental body or agency, or

(2) hospitals maintained by a nonprofit corporation organized for hospital purposes, or

(3) with other corporations, organizations, associations, partnerships, or individuals furnishing health services.

A health service corporation may enter into agreements or contracts with other organizations or corporations licensed to do business in this state or in any other state for:

(1) the transfer of members or beneficiaries,

(2) the reciprocal joint provisions of benefits to the members or beneficiaries of the corporation and of those other organizations or corporations, or

(3) other joint undertakings the corporation's board of directors approves.

Section 8. There is a new R.C.M. section numbered 40-5908 that reads as follows:

40-5908. Enrollment representative. (1) A person who, for compensation, solicits membership in a prepayment health service plan offered by a corporation subject to the provisions of this act, is an enrollment representative of that corporation.

(2) The definitions of enrollment representative as defined in this act do not include:

(a) an individual employed and used by enrollment representatives for the performance of clerical, stenographic and similar office duties;

(b) an individual employed and used for incidental taking of an application for coverage from time to time in the office of the employing enrollment representative;

(c) an individual who secures and forwards information for the purpose of an existing group contractor for enrolling individuals under an existing group contract.

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Section 9. There is a new R.C.M. section numbered 40-5909 that reads as follows:

40-5909. Enrollment representative — filing with commissioner — license. (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title and address of each person it desires appointed as an enrollment representative. The notice shall be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. If, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

(a) the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's enrollment representative, and

(b) he qualifies under the provisions of this section, the commissioner shall issue to that appointee a license which states that the person named is a constituted enrollment representative of the corporation in this state.

(2) For appointees who have not acted as an enrollment representative for a health service corporation for a period of two (2) years prior to the effective date of this act, if he considers it desirable, the commissioner may, require an appointee to submit to an examination to determine the qualifications of the appointee to act as an enrollment representative in this state. This examination shall inquire into an applicant's knowledge of the provisions of this chapter and of the forms submitted and utilized by the employing corporation.

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its enrollment representative, that person has a temporary enrollment representative's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an enrollment representative ceases on the day the corporation is notified of rejection.

Section 10. There is a new R.C.M. section numbered 40-5910 that reads as follows:

40-5910. Licenses — refusal to issue — suspension — revocation. (1) If for cause shown, and after a hearing or examination the commissioner determines a person is unsuitable to act as an enrollment representative, he shall:

(a) refuse to issue a license, or

(b) revoke a license previously issued, and

(c) notify in writing both the appointee and the corporation of refusal.

(2) Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an enrollment representative to act for it, a license issued or a renewal thereof expires on January 1 after its issuance. A license may be renewed

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annually upon payment of the annual license renewal fee as prescribed in section 40-5917.

(3) The commissioner may suspend, for not more than twelve (12) months, or revoke or refuse to continue any license issued under this act if he finds that as to the licensee any one or more of the following causes exists:

(a) any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) obtaining or attempting to obtain a license through misrepresentation or fraud;

(c) violation of or noncompliance with applicable provisions of this chapter, or willful violation of any lawful rule, or order of the commissioner;

(d) misappropriation or conversion to his own use, or illegal withholding, moneys or property belonging to the health service corporation, its members, beneficiaries, or others and received in conduct of business under the license;

(e) conviction of a felony involving moral turpitude;

(f) fraudulent or dishonest practices, in the conduct of his affairs under the license, or

(g) incompetence, untrustworthiness, or injury and loss to the public while acting under the license.

(4) The action taken under subsection (3) shall be the result of a hearing granted the licensee with twenty (20) days' notice. The notice and the reasons for the commissioner's action shall be by certified mail to the licensee and the corporation.

Section 11. There is a new R.C.M. section numbered 40-5911 that reads as follows:

40-5911. Annual report. All corporations subject to the provisions of this act shall make and file annually with the commissioner, on or before March 1 of each year, a report under oath setting forth:

(1) the name of the corporation;

(2) the address of its registered office in this state and the name of its registered agent at that address;

(3) the names and addresses of its directors and officers;

(4) a brief statement of the character of the affairs which the corporation is actually conducting;

(5) the amount of all dues or fees collected from members in the last fiscal year, the amounts actually paid during that year for health services for the members or beneficiaries, and the amounts placed in reserves;

(6) a balance sheet and statement of income and expenditures for the most recent fiscal year of the corporation, prepared and verified by two officers of the corporation and certified by a certified public accountant;

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(7) a statement of any other facts or information concerning the financial affairs of the health service corporation which may be reasonably required by the commissioner.

Section 12. There is a new R.C.M. section numbered 40-5912 that reads as follows:

40-5912. Examination of a health service corporation. (1) If the commissioner believes a health service corporation is unable or potentially unable to fulfill its contractual obligations to its members, the commissioner may conduct an examination of that corporation.

(2) Each health service corporation examined, its officers, employees, and agents shall produce and make available to the commissioner or his examiners the accounts, records, documents, files, information, assets and matters in his possession or control relating to the subject of the examination.

(3) The commissioner or his examiner shall make a verified report of the examination.

(4) The report shall comprise only facts appearing from the books, papers, records, or documents of the corporation examined, or ascertained from the testimony, under oath, of individuals concerning its affairs, and conclusions and recommendations as warranted by those facts.

(5) The commissioner shall furnish a copy of the proposed report to the corporation examined not less than twenty (20) days prior to its filing in his office. If the corporation requests a hearing, in writing, within the twenty (20) day period, the commissioner shall grant one with respect to the report, and shall not file the report until after the hearing and after modifications, if any, the commissioner deems proper.

Section 13. There is a new R.C.M. section numbered 40-5913 that reads as follows:

40-5913. Grievance procedure. Any individual member of a corporation, subject to the provisons of this act, who believes himself to be aggrieved by any act or omission of the corporation or its officers, directors, or employees, may file a statement in writing of his grievance in the office of the commissioner, and the commissioner may investigate the grievance. No investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by an aggrieved member, or as a bar to any defense by the involved corporation.

Section 14. There is a new R.C.M. section numbered 40-5914 that reads as follows:

40-5914. Nonliability. A health service corporation is not liable for injuries resulting from neglect, misfeasance, malfeasance or malpractice on the part of any person, organization, agency or corporation, rendering health services to the health service corporation's members and beneficiaries.

Section 15. There is a new R.C.M. section numbered 40-5915 that reads as follows:

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40-5915. Premium tax exemption. A health service corporation is exempt from all premium taxes.

Section 16. There is a new R.C.M. section numbered 40-5916 that reads as follows:

40-5916. Montana Administrative Procedure Act applicable. All final administrative actions or decisions of the commissioner under this act are subject to judicial review under and in accordance with the Montana Administrative Procedure Act.

Section 17. There is a new R.C.M. section numbered 40-5917 that reads as follows:

40-5917. Fees. Every health service corporation subject to the provisions of this act shall pay the following fees to the commissioner of insurance for enforcement of the provisions of this chapter:

(1) Enrollment representative's license:

(a) application for original license including examination and issuance of license.....$10

(b) annual renewal.....$ 5

(2) Filing any other statement or report.....$ 1

(3) For a certified copy of any document or other paper filed in the office of the commissioner, per page..... $.50

(4) For the certificate and for affixing the seal thereto.....$ 1

(5) Filing of a membership contract.....$10

(6) Filing of a membership contract package.....$25

(7) Filing annual report, a fee of twenty cents ($.20) for each individual or family unit the corporation covered at the close of the year to which the annual report is applicable; except that the minimum fee payable upon filing of an annual report is one hundred dollars ($100).

The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fees and license fees received by him under this section.

Section 18. There is a new R.C.M. section numbered 40-5918 that reads as follows:

40-5918. Trade practices prohibited. In order to regulate trade practices of health service corporations the following practices are prohibited:

(1) No person may make, issue, circulate or cause to be made, issued or circulated any estimate, circular, or statement misrepresenting:

(a) the terms of any health service corporation membership contract issued or to be issued; or

(b) the benefits or advantages promised thereby; or make any misleading representation or any misrepresentation as to the financial condition of any health service corporation.

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(2) No person may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation or statement with respect to the business of a health service corporation which is untrue, deceptive or misleading.

(3) No person may make or issue or cause to be made or issued any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any health service corporation membership contract for the purpose of inducing or attempting or tending to induce a member to cancel or convert any membership contract.

(4) No person may file with any public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of a health service corporation with intent to deceive.

(5) No person may make any false entry in any book, report or statement of any health service corporation with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom that health service corporation is required by law to report, or who has authority by law to examine into its condition, or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of that health service corporation in any book, report or statement of the health service corporation.

(6) No person may make, publish, disseminate or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of a health service corporation, or of an organization proposing to become a health service corporation, and which is calculated to injure any person engaged or proposing to engage in the business of operating a health service corporation.

(7) No person may enter into agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of the operation of health service corporations.

(8) No person may knowingly make or permit any unreasonable discrimination between individuals in any classification which may be established by a health service corporation and of essentially the same condition of health in the amount of dues or rates charged for any membership contract or in the benefits payable thereunder, or in any of the terms and conditions of such contract or in any manner whatever. Nothing herein contained shall, however, restrict the right of a health service corporation

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within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

Section 19. There is a new R.C.M. section numbered 40-5919 that reads as follows:

40-5919. Certain exclusions. (1) Nothing contained in section 40-5918, subsection (8) includes within the definition of discrimination any of the following practices:

(a) readjustment of the rate of payment for membership in a health service corporation under a group contract based on the loss or expense experience thereunder at the end of the first or any subsequent contract year thereunder which may be made retroactive only for that contract year;

(b) in the case of membership contracts issued on the pre-authorized bank draft or similar plans, making allowance to members in an amount which fairly represents the saving in collection expense;

(c) reduction of the rate of payment for group contracts covering a large number of members, but not exceeding savings in administrative expenses reasonably attributable to these contracts as compared with contracts offering similar benefits to smaller numbers of members;

(d) issuing individual membership contracts on a "salary savings" or payroll deduction plan reasonably commensurate with the savings made by use of such plan.

(2) Nothing in this chapter gives the commissioner power to fix and determine a rate level by classification or otherwise.

Section 20. There is a new R.C.M. section numbered 40-5920 that reads as follows:

40-5920. Notice of violation. If the commissioner shall for any reason have cause to believe that violation of this act has occurred or is threatened, the commissioner may give written notice to the health service corporation and to the representatives, or other persons who appear to be involved in the suspected violation, to arrange a conference with the alleged violators or their authorized representative for the purpose of attempting to ascertain the facts relating to the suspected violation, and in the event it appears that a violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.

Section 21. There is a new R.C.M. section numbered 40-5921 that reads as follows:

40-5921. Cease and desist order. The commissioner acting in the name of the state may issue an order directing a health service corporation or a representative of a health service corporation to cease and desist

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from engaging in any act or practice in violation of the provisions of this act.

Within fifteen (15) days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this act have occurred. These hearings shall be conducted under the Montana Adminstrative Procedure Act.

Section 22. There is a new R.C.M. section numbered 40-5922 that reads as follows:

40-5922. Injunctive relief. In the case of any violation of the provisions of this act, if the commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued under this act, the commissioner may institute a proceeding to obtain injunctive relief, receivership, or other appropriate relief, in the district court of the county in which the violation occurs, or in which the principal place of business of the health service corporation is located. Any proceeding under this section shall conform to the requirements of chapter 42 or 44 of Title 93, except that the commissioner shall not be required to allege facts tending to show the lack of an adequate remedy at law or tending to show irreparable damage or loss.

Section 23. There is a new R.C.M. section numbered 40-5923 that reads as follows:

40-5923. Grace period. Any corporation organized prior to the effective date of this act, under chapter 23 of Title 15, for the purpose of administering and operating a nonprofit health service plan, as described in this act, has a period of one (1) year after the effective date of this act to comply with all the provisions hereof.

Section 24. Section 15-2304, R.C.M. 1947, is amended to read as follows:

"**15-2304. Purposes.** Corporations may be organized under this act for any lawful purpose or purposes."

Approved April 8, 1975.

CHAPTER NO. 320

AN ACT TO PROVIDE MATERNITY LEAVE TO PUBLIC AND PRIVATE EMPLOYEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 41-2601 that reads as follows:

41-2601. Definitions. (1) "Commissioner" means the commissioner of labor and industry.

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(2) "Employer" means any public or private employer.

Section 2. There is a new R.C.M. section numbered 41-2602 that reads as follows:

41-2602. Denial of maternity leave unlawful. (1) It shall be unlawful for an employer or his agent:

(a) to terminate a woman's employment because of her pregnancy, or

(b) to refuse to grant to the employee a reasonable leave of absence for such pregnancy, or

(c) to deny to the employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer; provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties, or

(d) to retaliate against any employee who files a complaint with the commissioner under the provisions of this act, or

(e) to require that an employee take a mandatory maternity leave for an unreasonable length of time.

(2) Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

Section 3. There is a new R.C.M. section numbered 41-2603 that reads as follows:

41-2603. Complaint—how filed. A person claiming to be aggrieved by a violation of section 41-2602 may make, sign, and file a verified complaint with the commissioner of labor and industry which shall state the circumstances of the violation and the particulars thereof and shall contain such other information as may be required by the commissioner. In addition, the commissioner whenever he has reason to believe that section 41-2602 has been or is being violated, may issue a complaint. Within sixty (60) days of the receipt of a complaint the commissioner shall state his findings of fact and decision.

If, upon all the evidence, the commissioner finds that a respondent has engaged in a violation of section 41-2602, he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay to the complainant the damages resulting from the violation. If, upon all the evidence, the commissioner finds that the respondent has not engaged in a violation of section 41-2602, he shall state his findings of fact and shall dismiss the complaint.

Section 4. There is a new R.C.M. section numbered 41-2604 that reads as follows:

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41-2604. Enforcement. The commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they consider appropriate, to determine whether any person has violated any provision of this act or any regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

Section 5. There is a new R.C.M. section numbered 41-2605 that reads as follows:

41-2605. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this act. Rulemaking under this act shall comply with the provisions of the Montana Administrative Procedure Act.

Section 6. There is a new R.C.M. section numbered 41-2606 that reads as follows:

41-2606. Individual action. Nothing in this act shall preclude an individual from prosecuting a private action in the district court alleging violation of the provisions of this act or any other act.

Approved April 8, 1975.

CHAPTER NO. 321

AN ACT TO RETAIN THE RESPONSIBILITY FOR PREPARING FISCAL NOTES IN THE OFFICE OF THE BUDGET DIRECTOR BY DELETING CERTAIN REFERENCES TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 43-1002, 43-1003, AND 43-1006, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-1002, R.C.M. 1947, is amended to read as follows:

"**43-1002. Budget director to prepare note.** The *budget director*, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days. The *director* may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval."

Section 2. Section 43-1003, R.C.M. 1947, is amended to read as follows:

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"**43-1003. Note referred to committee — distribution to legislators on report of bill.** A completed fiscal note shall be submitted by the *budget director* to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be *reproduced* and placed on the members' desks."

Section 3. Section 43-1006, R.C.M. 1947, is amended to read as follows:

"**43-1006. Background information available to legislators.** The *budget director* shall make available on request to any member of the *legislature* all background information used in developing a fiscal note."

Section 4. This act is effective upon passage and approval.

Approved April 8, 1975.

CHAPTER NO. 322

AN ACT PROVIDING FOR APPOINTMENT OF MEMBERS TO THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES, AND SETTING THEIR QUALIFICATION; AND AMENDING SECTION 82A-605, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-605, R.C.M. 1947, is amended to read as follows:

"**82A-605. Board of health and environmental sciences creation —members—appointment—qualifications.** (1) *There is a* board of health and environmental sciences.

(2) The board consists of seven (7) members appointed by the governor as follows: at least two (2) members shall have professional qualifications in human or animal health service licensed by a board within a department of professional and occupational licenses and the other members not holding such qualifications, shall have demonstrated intelligent and active interest in the field of public health.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act."

Section 2. This act is effective on passage and approval.

Approved April 8, 1975.

CHAPTER NO. 323

AN ACT AMENDING SECTIONS 87-105, 87-110 AND 87-148, R.C.M.

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1947, TO COVER ALL PUBLIC EMPLOYEES UNDER THE UNEMPLOYMENT COMPENSATION LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-105, R.C.M. 1947, is amended to read as follows:

"**87-105. Benefit eligibility conditions.** An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the *division* finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the *division* may prescribe, except that the *division* may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 87-107 (a).

(c) He is able to work and is available for work and is seeking work, provided, however, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of one (1) week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits, in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year, but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto;

(3) Unless it occurs within the benefit year of the claimant;

(4) Unless it occurs after benefits first could become payable to any individual under this act.

(e) An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment, however, the individual must have earned the lesser of three-thirteenths (3/13) of his high quarter of his second benefit year or six (6) times his weekly benefit amount of that same year.

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(f) Benefits based on service in employment defined in section 87-148 (j)(6) and (7) and section 87-110 (d) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity in *a public school of the state of Montana, or in* an institution of higher education (as defined in section 87-148 (n)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any *such public school,* institution, or institutions of higher education for both such academic years or both such terms."

Section 2. Section 87-110, R.C.M. 1947, is amended to read as follows:

"**87-110. Period, election and termination of employer's coverage.** (a) Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in *subsection* (c) of this section.

(b) Except as otherwise provided in subsection (c) of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the division prior to the last day of February, of such year, a written application for termination of coverage, and the division finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed five hundred dollars ($500). For the purpose of this subsection, the two (2) or more employing units mentioned in paragraph (2) or (3) of section 87-148 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, or any employing unit for which services are performed that do not constitute employment as defined in this act, may file with the division, a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the division a written notice to that effect."

Section 3. Section 87-148, R.C.M. 1947, is amended to read as follows:

"**87-148. Definitions.** As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an

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employer (regardless of the time of payment) for employment during a calendar year.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(e) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(f) "Division" means the employment security division of the department of labor and industry provided for in Title 82A, chapter 10, R.C.M. 1947.

(g) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this state; and all individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

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(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars ($500);

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund, or an employing unit, which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

(B) The service is not localized in any state but some of the service is performed in this state and (I) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be

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deemed to be employment subject to this act if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the division that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. Effective after *July 1, 1975*, the term "employment" shall include service performed by all individuals *including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit,* and one (1) or more other states or their instrumentalities *or political subdivisions whose services are compensated by salary or wages. "Employment" shall not include elected public officials.*

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(A) For the purposes of paragraph (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church

in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a school which is not an institution of higher education; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or (4) of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds (⅔) or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

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(4) A corporation organized under the laws of the United States or of any state.

(9) The term "employment" shall not include:

(A) Agricultural labor; the term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half (½) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

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(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of *eighteen (18)* in the employ of his father or mother;

(E) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;

(F) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the division is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(G) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(H) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(I) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(J) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

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(K) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the division may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

(p) "Board" means the board of labor appeals, provided for in Title 82A, chapter 10."

Approved April 8, 1975.

CHAPTER NO. 324

AN ACT TO RAISE THE MINIMUM SALARY OF FIREFIGHTERS IN CITIES AND TOWNS OF THE FIRST AND SECOND CLASS TO SEVEN HUNDRED FIFTY DOLLARS ($750) PER MONTH AND TO DELETE THE MAXIMUM OF TWENTY (20) YEARS FOR PERCENTAGE INCREASE BY AMENDING SECTION 11-1932, R.C.M. 1947.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1932, R.C.M. 1947, is amended to read as follows:

"**11-1932. Minimum wages of firemen in cities of first and second class.** From and after July 1, *1975*, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first *and second* class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours *of* work of at least *seven* hundred dollars *($700)* per month for the first year of service, and thereafter of at least *seven* hundred dollars *($700)* minimum per month plus one percent (1%) of said minimum base monthly salary for each additional year of service. *After* July 1, *1976*, there shall be paid to each duly appointed and confirmed member of the fire department of cities *or towns* of the *first and* second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours *of* work of at least *seven* hundred *fifty* dollars *($750)* per month for the first year of service, and thereafter of at least *seven* hundred *fifty* dollars *($750)* per month plus one *percent* (1%) of said minimum base monthly salary for each additional year of service."

Section 2. **Funding.** In compliance with section 43-517, R.C.M. 1947, the administration of this act is declared a public purpose of a city or town which may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the city or town.

Approved April 8, 1975.

CHAPTER NO. 325

AN ACT AMENDING SECTION 84-202, R.C.M. 1947, TO EXEMPT FROM TAXATION PROPERTY USED FOR RELIGIOUS AND RELATED PURPOSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) *(a)* The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, *buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church,* such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used

or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; *and* the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, *such property is exempt from taxation,* and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation."

Approved April 8, 1975.

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CHAPTER NO. 326

AN ACT TO EXEMPT SALARIES OF RESIDENT MILITARY PERSONS FROM THE STATE INCOME TAX; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-4907.2 that reads as follows:

84-4907.2. Special military exemption. The salary received from the armed forces by residents of Montana, who are serving on active duty in the regular Armed Forces, and who entered into active duty from Montana, is exempt from state income tax.

Section 2. This act is effective for all taxable years after December 31, 1974.

Approved April 8, 1975.

CHAPTER NO. 327

AN ACT TO CHANGE THE EXPIRATION DATE OF TAX-PAID DECALS ON SNOWMOBILES; TO ALLOW A TEN (10) DAY GRACE PERIOD FROM DATE OF PURCHASE TO MAKE APPLICATION FOR TAX-PAID DECALS; PROVIDING FOR PROOF OF PURCHASE; AND CHANGING TIME OF ASSESSMENT ON SNOWMOBILES; AMENDING SECTIONS 53-1026 AND 84-406, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1026, R.C.M. 1947, is amended to read as follows:

"53-1026. Application to be made annually — grace period — proof of purchase. *(1)* Application must be made to the county treasurer for the issuance of tax-paid decals annually. All tax-paid decals expire on *June 30* of each year.

(2) An owner of a newly purchased snowmobile shall have a grace period of ten (10) days from the date of purchase to make application for a current tax-paid decal; provided, however, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be carried by the operator or with the snowmobile at all times. An owner or operator of such a snowmobile being operated after the ten (10) day grace period without a current tax-paid decal displayed on the snowmobile shall be subject to the penalties of section 53-1027."

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Section 2. Section 84-406, R.C.M. 1947, is amended to read as follows:

"**84-406. Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles.** (1) The department of revenue or its agent must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. It must also ascertain and assess all mobile homes arriving in *the* county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may by subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) *Campers* which are required by subdivision 4 hereof to be assessed as of the first day of January.

(f) Snowmobiles which are required by subdivision 5 hereof to be assessed as of the first day of July.

(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registra-

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tion or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The department of revenue or its agent must ascertain and assess all campers in *each* county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such camper was at 12 *midnight* of the first day of January in each year.

(5) The department of revenue or its agent must ascertain and assess all snowmobiles in each county subject to taxation as of July 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile was at 12 midnight on the first day of July in each year; provided, however, that snowmobiles which constitute inventory of snowmobile dealers shall be assessed to the dealers as of 12 midnight of the first day of January in each year; and further provided that all snowmobiles that have been assessed and for which taxes have been paid for the period of January 1, 1975 through December 31, 1975, shall be assessed for only six (6) months during the period July 1, 1975 through June 30, 1976."

Approved April 8, 1975.

CHAPTER NO. 328

AN ACT TO AMEND SECTIONS 84-6402, AND 84-6404, R.C.M. 1947, TO PROVIDE FOR ASSESSMENT OF ALL PROPERTY OF AIRLINES OPERATING IN MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-6402, R.C.M. 1947, is amended to read as follows:

"**84-6402. Assessment of property.** The property of all scheduled airline companies operating in Montana shall be assessed annually by the state department of revenue."

Section 2. Section 84-6404, R.C.M. 1947, is amended to read as follows:

"**84-6404. Determination of value.** The department of revenue shall determine the full and true valuation of all property of all airlines oper-

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ating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(1) Determining the full and true valuation of all property, owned and operated by every scheduled airline company;

(2) Allocating to the state of Montana, from this total valuation, a valuation which represents this state's proper share of the valuation of the property, through the application of ratios, which are indicated in section 84-6403, subsections (8), (9), (10) and (11), against the total valuation; *and*

(3) assessing, by the agent of the department of revenue in the county where they are located, buildings, furniture, and other personal property. These values shall be subtracted from the total state share to arrive at the value to be allocated.

(4) After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made."

Approved April 8, 1975.

CHAPTER NO. 329

AN ACT TO AUTHORIZE EACH STATE AGENCY TO ADOPT RULES IMPOSING A FEE TO BE PAID BY AN APPLICANT FOR A LEASE, PERMIT, CONTRACT, LICENSE, OR CERTIFICATE WHEN AN AGENCY IS REQUIRED TO COMPILE AN ENVIRONMENTAL IMPACT STATEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-6518 that reads as follows:

69-6518. Fee may be imposed. (1) Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by section 69-6504, R.C.M. 1947, of the Montana Environmental Policy Act. An agency must determine within thirty (30) days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this section. The fee assessed under this section shall only be used to gather data and information necessary to compile an environmental impact statement as defined in the Montana Environmental Policy Act. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

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(2) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate, as specified in subsection (1), an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. No fee may be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of two thousand five hundred dollars ($2,500) to compile an environmental impact statement. The maximum fee that may be imposed by an agency shall not exceed two percent (2%) of any estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of any estimated cost over one million dollars ($1,000,000) and up to twenty million dollars ($20,000,000); plus one-half of one percent (½ of 1%) of any estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (¼ of 1%) of any estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-eighth of one percent (⅛ of 1%) of any estimated cost in excess of three hundred million dollars ($300,000,000). If an application consists of two (2) or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities. The estimated cost shall be determined by the agency and the applicant at the time the application is filed.

(3) No fee as prescribed by this section may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Utility Siting Act, Title 70, chapter 8, R.C.M. 1947.

(4) In adopting rules prescribing fees as authorized by this section, an agency shall comply with the provisions of the Montana Administrative Procedure Act, Title 82, chapter 42, R.C.M. 1947.

(5) All fees collected under this section shall be deposited in the state earmarked revenue fund as provided in section 79-410, R.C.M. 1947. All fees paid pursuant to this section shall be used as herein provided and each agency upon completion of the necessary work will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

(6) In cases where a combined facility proposed by an applicant requires action by more than one (1) agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one (1) fee pursuant to this section, to coordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the funds necessary to the other agencies which require funds for the completion of the necessary work.

(7) Each agency shall review and revise its rules imposing fees as authorized by this section at least every two (2) years. Furthermore, each agency shall provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature.

Approved April 8, 1975.

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CHAPTER NO. 330

AN ACT AMENDING SECTION 37-106, R.C.M. 1947, TO REQUIRE THE ATTORNEY GENERAL TO SUPPLY A BRIEF STATEMENT OF THE IMPLICATION OF A VOTE FOR OR AGAINST A PROPOSITION ON THE BALLOT BESIDE THE DIAGRAM WHERE THE VOTER IS TO MARK THE BALLOT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-106, R.C.M. 1947, is amended to read as follows:

"**37-106. Manner of voting — ballot.** The manner of voting on measures submitted to the people shall be by marking the ballot with a cross in or on the diagram opposite and to the left of the proposition for which the voter desires to vote. The form of ballot to be used on measures submitted to the people shall be submitted to and determined by the attorney general of the state of Montana. *In the event a statement of the implication of a vote is not provided, the attorney general shall supply a brief statement in simple language of the implication of a vote for or against a measure beside the diagram provided for the marking of the ballot similar to the following example:*

"☐ For *extending the right to vote to persons eighteen (18) years of age.*

☐ Against *extending the right to vote to persons eighteen (18) years of age.*""

Approved April 8, 1975.

CHAPTER NO. 331

AN ACT PROVIDING FOR THE PAYMENT OF ACTUAL AND NECESSARY EXPENSES TO AGENTS REQUIRED TO RETURN FUGITIVES TO THIS STATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 95-3124.1 that reads as follows:

95-3124.1. Expenses for returning fugitives. An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid all actual and necessary expenses incurred in returning the fugitive to this state. Actual and necessary expenses for

transportation when a vehicle other than a state vehicle is utilized, shall be calculated at the rate allowed by law for state employees.

Approved April 8, 1975.

CHAPTER NO. 332

AN ACT TO AMEND SECTION 26-104.9, R.C.M. 1947, TO CLARIFY THE COMMISSION'S POWER TO REGULATE THE USE OF LANDS BY ADDING LAKES, RIVERS, AND STREAMS AND THE OPERATION OF MOTORBOATS TO ITS JURISDICTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-104.9, R.C.M. 1947, is amended to read as follows:

"**26-104.9. Regulation of use of lands.** (1) The commission may adopt and enforce rules governing uses of lands acquired or held under easement by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. The rules shall be adopted in the interest of public health, public safety, and protection of property in regulating the use of these lands. All lease and easement agreements shall itemize uses as listed in section 26-104.6.

(2) The commission may adopt and enforce rules governing recreational uses of *all* public fishing reservoirs, *public* lakes, *rivers, and streams which are legally accessible to the public* or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules shall be adopted in the interest of public health, public safety, and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, *the operation of motor-driven boats,* water skiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, *lakes, rivers, and streams* or at designated areas along the shore of the reservoirs, *lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this section must be areas which are legally accessible to the public.* These rules are subject to review and approval by the department of health and environmental sciences as to public health and sanitation before becoming effective. Copies of the rules shall show that endorsement."

Approved April 8, 1975.

CHAPTER NO. 333

AN ACT TO PROVIDE QUALIFICATIONS FOR THE BOARD OF PARDONS AND PLACE THE RESPONSIBILITY FOR FIELD

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SERVICES STAFF FOR PROBATION AND PAROLE IN THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 82A-804, 95-3203 THROUGH 95-3206, R.C.M. 1947; RENUMBERING AND AMENDING SECTIONS 95-3210, 95-3213 AND 95-3220, R.C.M. 1947; AND REPEALING SECTIONS 95-3207, 95-3211, 95-3212, AND 95-3219, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-804, R.C.M. 1947, is amended to read as follows:

"82A-804. Board of pardons — composition — allocation — designation. (1) There is a board of pardons.

(2) The board consists of three (3) members *at least one of whom shall have particular knowledge of Indian culture and problems. Members of the board shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.*

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108 (2) (d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112, *except board members shall be compensated as provided by legislative appropriation.*"

Section 2. Section 95-3203, R.C.M. 1947, is amended to read as follows:

"95-3203. Act, how cited. This act shall be known and may be cited as the "Parole and Executive Clemency Act"."

Section 3. Section 95-3204, R.C.M. 1947, is amended to read as follows:

"95-3204. Board of pardons. (1) The board of pardons *is responsible for* executive clemency and parole *as provided in this chapter.*

(2) The board shall meet at least *twice* each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge."

Section 4. There is a new R.C.M. section numbered 95-3302.1 that reads as follows:

95-3302.1. Qualifications of probation and parole officers. Probation and parole officers shall have at least a college degree and shall have received at least some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in section 82A-804(2) may be substituted for educational requirements at the rate of one (1) year of experience for nine (9)

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months formal education, if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

Section 5. Section 95-3205, R.C.M. 1947, is amended to read as follows:

"**95-3205. Definitions.** Unless the context requires otherwise, in this *chapter*:

(1) "Board" means the board of pardons provided for in section 82A-804.

(2) *"Department" means the department of institutions provided for in Title 82A, chapter 8.*

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision *of the department of institutions.*

(4) "Executive clemency" refers to the powers of the governor as provided by section 12 of article VI of the constitution of Montana."

Section 6. Section 95-3206, R.C.M. 1947, is amended to read as follows:

"**95-3206. Orders, records, report.** Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance of terms of this act. The department of institutions shall keep a record of the board's acts and decisions available to the public. However, all social records, including the pre-sentence report, the pre-parole report and the supervision history obtained in the discharge of official duty by *the department*, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discretion, when the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney."

Section 7. There is a new R.C.M. section numbered 95-3301 that reads as follows:

95-3301. Definitions. As used in this chapter, unless the context requires otherwise: (1) "Board" means the board of pardons provided for in section 82A-804.

(2) "Department" means the department of institutions provided for in Title 82A, chapter 8.

(3) "Probation" means the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

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Section 8. There is a new R.C.M. section numbered 95-3302 that reads as follows:

95-3302. Powers of the department. The department may: (1) appoint probation and parole officers and other employees necessary to administer this chapter;

(2) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

Section 9. Section 95-3210, R.C.M. 1947, is renumbered 95-3303, and is amended to read as follows:

"**95-3303. Duties of the department.** *The department* is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) *Divide* the state into districts, and assign probation and parole officers to serve in these districts and courts;

(2) Obtain any necessary office quarters for the staff in each district;

(3) Assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) Direct the work of the probation and parole officers and other employees;

(5) Formulate methods of investigation, supervision, recordkeeping, and reports;

(6) Conduct training courses for the staff;

(7) Co-operate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) Administer the interstate compact for the supervision of parolees and probationers."

Section 10. There is a new R.C.M. section numbered 95-3304 that reads as follows:

95-3304. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct, and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may

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modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

Section 11. There is a new R.C.M. section numbered 95-3306 that reads as follows:

95-3306. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

Section 12. There is a new R.C.M. section numbered 95-3307 that reads as follows:

95-3307. Parole services. To assist parolees the department may, in addition to other services, provide the following:

(1) employment counseling, job placement, and assistance in residential placement;

(2) family and individual counseling and treatment placement;

(3) financial counseling;

(4) vocational and educational counseling and placement; and

(5) referral services to any other state or local agencies.

The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

Section 13. Section 95-3220, R.C.M. 1947, is renumbered 95-3308, and is amended to read as follows:

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"**95-3308. Return of parole violator.** *(1)* At any time during release on parole or conditional release the *department* may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the *department.* Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner may, if circumstances warrant, be incarcerated in such institution.

(2) After the arrest of said prisoner, a hearing shall be held within a reasonable time, unless such hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over this hearing. This hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of this hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(3) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. Based on the information given to him, the hearings officer must determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as specified in section 95-3217.

If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release and this report shall be accompanied by the findings of the hearings officer. Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

(4) A prisoner for whose return a warrant has been issued shall, after

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the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board."

Section 14. There is a new R.C.M. section numbered 95-3309 that reads as follows:

95-3309. Cases of juveniles excluded. The provisions of this chapter shall not apply to probation in the juvenile court or to parole from state institutions for juveniles.

Section 15. Section 95-3213, R.C.M. 1947, is renumbered 95-3305.

Section 16. The provisions of sections 82A-116 through 82A-122 are applicable to this act.

Section 17. Sections 95-3207, 95-3211, 95-3212, and 95-3219, R.C.M. 1947, are repealed.

Approved April 8, 1975.

CHAPTER NO. 334

AN ACT AMENDING SECTION 4-117, R.C.M. 1947, TO REMOVE ARCHAIC LANGUAGE AND TO PROVIDE A PERSON WHO PURCHASES LIQUOR IN CASE LOTS WITH A FIVE PERCENT (5%) REDUCTION FROM THE RETAIL PRICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-117, R.C.M. 1947, is amended to read as follows:

"**4-117. Reduction for quantity sales of liquor.** *Reduction of five percent (5%) of the retail price of liquor sold at the state liquor store* shall be made by the *department* for sales of liquor *to any person purchasing liquor in unbroken case lots. No other reduction shall be made by the department of revenue for quantity sales of liquor.*"

Section 2. **Conditions to renumbering.** If a bill to recodify and generally revise the alcoholic beverage control laws is enacted by the Forty-fourth legislature, section 4-117 as amended in section 1 of this act is renumbered in accordance with the other act.

Approved April 9, 1975.

CHAPTER NO. 335

AN ACT AMENDING SECTIONS 89-702 AND 89-702.1, R.C.M. 1947, TO

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CLEARLY PROVIDE THAT ALL DAMS, DIKES, AND RESERVOIRS ARE INCLUDED IN SAID SECTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-702, R.C.M. 1947, is amended to read as follows:

"**89-702. Dams, dikes, and reservoirs to be constructed in a secure manner — proceedings upon complaint of insecurity.** (1) A person, association, or corporation may not construct, or cause to be constructed, a dam, dike, *or reservoir* for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

(2) The department of natural resources and conservation may at any time on its own motion, and it shall, upon complaint on oath being made to the department by three (3) or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam, dike, *or* reservoir within the state, and that they have reason to believe said *dam, dike or* reservoir is in an unsafe condition, or that it is *diverting or is* being filled with water to such an extent as to render it unsafe, immediately examine, or cause to be examined, the *dam, dike or* reservoir. If, upon the examination, the department finds that the *dam, dike or* reservoir is unsafe, or is *diverting or is* being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the *dam, dike or* reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

(3) If either party is dissatisfied with the findings of the department, it may appeal to the district court of the district wherein the *dam, dike or* reservoir is located, and the court shall hear and determine the matter at the earliest practical time, subject to the right of either party to appeal as in other civil cases; however, the judgment of the department shall control until the final determination of the case."

Section 2. Section 89-702.1, R.C.M. 1947, is amended to read as follows:

"**89-702.1. Jurisdiction of department.** Jurisdiction of the department under section 89-702 applies to any dam, dike, *or reservoir* which does or will impound or divert water, and which:

(1) has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more; or,

(2) is twenty-five (25) feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam or dike, or from the lowest elevation of the outside limit of the dam or dike, if it is not across a stream channel or watercourse, to the maximum storage elevation."

Section 3. There is a new R.C.M. section numbered 89-702.2 that reads as follows:

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89-702.2. Federal structures exempt from act. The provisions of this act shall not apply to dams, dikes, and reservoirs which are subject to federal power commission inspections under federal laws.

Approved April 9, 1975.

CHAPTER NO. 336

AN ACT PROVIDING FOR LICENSURE AND REGULATION OF RADIOLOGIC TECHNOLOGISTS; ESTABLISHING A BOARD OF RADIOLOGIC TECHNOLOGISTS; PROVIDING FOR ADMINISTRATION OF THE ACT, INSPECTIONS, ENFORCEMENT AND PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-3701 that reads as follows:

66-3701. Definitions. As used in this act unless the context clearly requires otherwise:

(1) "Board" means the board of radiologic technologists created by this act.

(2) "License" means an authorization, to apply x-ray radiation to persons, issued by the department of professional and occupational licensing.

(3) "Department" means the department of professional and occupational licensing.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Permit" means an authorization which may be granted by the board, to apply x-ray radiation to persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(6) "Radiologic technologist" means a person other than a licensed practitioner who applies x-ray radiation to persons.

Section 2. There is a new R.C.M. section numbered 66-3702 that reads as follows:

66-3702. License required — provisos. No person may apply x-ray radiation to a person unless licensed under this act, with the following provisos:

(1) A person licensed as a radiologic technologist may apply x-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such examinations or treatments.

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(2) Licensure is not required for:

(a) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic or radiologic technology who applies x-ray radiation to persons under the direct supervision of a person licensed to prescribe such examinations or treatment;

(b) a person administering x-ray examinations related to the practice of dentistry.

(3) Nothing in this act shall be construed to limit or affect in any respect, the practice of their respective professions by duly licensed practitioners.

Section 3. There is a new R.C.M. section numbered 82A-1602.28 that reads as follows:

82A-1602.28. Board of radiologic technologists—composition—terms. (1) There is a board of radiologic technologists.

(2) The board consists of seven (7) members appointed by the governor; two (2) members shall be radiologists licensed to practice medicine in Montana; one (1) member shall be a physician licensed to practice medicine in Montana; one (1) member shall be a chiropractor licensed to practice in Montana; and three (3) members shall be radiologic technologists registered with the American Registry of Radiologic Technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists. Vacancies in unexpired terms shall be filled for the remainder of the term.

(3) Each member shall serve for a term of three (3) years with the following terms for the first appointed members:

(a) one (1) radiologist for two (2) years

(b) one (1) radiologist for three (3) years

(c) one (1) physician for one (1) year

(d) one (1) radiologic technologist for one (1) year

(e) one (1) radiologic technologist for two (2) years

(f) one (1) radiologic technologist for three (3) years

(g) one (1) chiropractor for three (3) years.

Section 4. There is a new R.C.M. section numbered 66-3703 that reads as follows:

66-3703. Board — compensation — meetings — quorum. (1) Board members may be compensated as determined by the board but not to exceed twenty-five dollars ($25) per day for official business. Board members shall be reimbursed for their actual and necessary expenses incurred while on official business of the board.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

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(3) Four (4) members of the board constitute a quorum for the purpose of transacting business.

Section 5. There is a new R.C.M. section numbered 66-3704 that reads as follows:

66-3704. Board can promulgate rules. The board may promulgate rules necessary to carry out the provisions of this act and adjudicate contested cases under it.

Section 6. There is a new R.C.M. section numbered 66-3705 that reads as follows:

66-3705. Applicants — qualifications. Each applicant for licensure as a radiologic technologist shall:

(1) have satisfactorily completed a course of study in radiologic technology approved by the board;

(2) be of good moral character;

(3) be at least eighteen (18) years of age;

(4) not be addicted to intemperate use of alcohol or narcotic drugs.

Section 7. There is a new R.C.M. section numbered 66-3706 that reads as follows:

66-3706. Examinations — licensure. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board. The written portion of the examination may be taken at any time, during normal working hours, at the department of professional and occupational licensing.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed six (6) months.

(3) A nonrefundable examination fee, established by the board but not to exceed fifty dollars ($50), shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination shall not be eligible for reexamination until twelve (12) months following the last failed examination.

(4) The board may accept in lieu of its own examination a certificate of the American Registry of Radiologic Technologists (ARRT) or a certificate, registration or license issued by another state whose qualifications are at least equal to those set forth in this act.

Section 8. There is a new R.C.M. section numbered 66-3707 that reads as follows:

66-3707. Licenses — permits. (1) The board shall issue a license or permit to each applicant who has submitted a non-refundable licensing fee set by the board not to exceed fifty dollars ($50) and has met the requirements of this act. Fees collected by the department shall be depos-

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ited in the earmarked revenue fund for the use of the board in administering this act.

(2) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this act but who has demonstrated to the satisfaction of the board the capability of performing high quality x-ray examinations without endangering public health and safety. Permits issued under provisions of this section shall specify x-ray examinations that may be performed by the holder. Permits shall be valid for a period not to exceed twelve (12) months but may be renewed under the provisions for original issuance.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire fifteen (15) days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to uncertified persons to practice as radiologic technologist when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray examinations without endangering public health and safety. Temporary permits shall not exceed twelve (12) months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions.

(5) Every radiologic technologist shall carry his license or permit while at work. The license or permit shall be displayed on request.

Section 9. There is a new R.C.M. section numbered 66-3708 that reads as follows:

66-3708. Issuance of license without examination. The board shall issue a license to an applicant if:

(1) the applicant has been employed as a radiologic technologist for at least five (5) of the six (6) years immediately preceding the effective date of this act, or,

(2) the applicant has been employed as a radiologic technologist for at least two (2) of the three (3) years immediately preceding the effective date of this act or is a student engaged in a course of x-ray technology on the effective date of this act and subsequently completes the course, or has successfully completed a twenty-four (24) month course in x-ray technology within two (2) years immediately preceding the effective date of this act, and can demonstrate proficiency to the satisfaction of the board.

Section 10. There is a new R.C.M. section numbered 66-3709 that reads as follows:

66-3709. Expiration of license — renewal. (1) Licenses expire on December 31 of the first even numbered year following the year of their issuance and on every even numbered year thereafter.

(2) A license shall be renewed by the board upon payment of a license

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fee set by the board and submission of a renewal application containing such information as the board deems necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been heretofore duly licensed in Montana and whose license has not been revoked or suspended, and who has temporarily ceased activities as a radiologic technologist for not more than five (5) years, may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

Section 11. There is a new R.C.M. section numbered 66-3710 that reads as follows:

66-3710. Suspension of license. A license or permit may be suspended for a fixed period, or may be revoked, or such technologists may be censured, reprimanded, or otherwise disciplined as determined by the board if after a hearing before the board it is determined that the radiologic technologist:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is a habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect, or is not mentally competent;

(4) is guilty of unethical conduct as defined by rules promulgated by the board or has been guilty of incompetence or negligence in his activities as a radiologic technologist;

(5) has continued to perform as a radiologic technologist without obtaining a license or license renewal as required by this act.

Section 12. There is a new R.C.M. section numbered 66-3711 that reads as follows:

66-3711. Inspections. Inspections for compliance with the provisions of this act may be performed by:

(1) the board of radiologic technologists;

(2) the department of professional and occupational licensing;

(3) the department of health and environmental sciences.

Section 13. There is a new R.C.M. section numbered 66-3712 that reads as follows:

66-3712. Violation of act — penalty. A person, or the employer of a person, who violates any provisions of this act or rules adopted under this act is guilty of an offense and shall be fined not to exceed five hundred dollars ($500). Each day of violation constitutes a separate offense.

Section 14. **If a part of this act is invalid all valid parts that are severable from the invalid parts remain in effect.** If a part of the act

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is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. This act is effective eighteen (18) months after its passage and approval except that members of the board shall be appointed sixteen (16) months prior to such date and the board may immediately initiate such action as necessary for this act to become fully effective.

Approved April 9, 1975.

CHAPTER NO. 337

AN ACT AMENDING SECTION 7-113, R.C.M. 1947, TO PERMIT STATE CHARTERED BUILDING AND LOAN ASSOCIATIONS TO CHARGE AN AMOUNT NOT TO EXCEED FIVE DOLLARS ($5) AS LATE PAYMENT PENALTY ON ANY PAYMENT MORE THAN FIFTEEN (15) DAYS LATE; TO CHARGE INTEREST ON THE LATE PAYMENT AT A RATE NOT TO EXCEED THE HIGHEST LAWFUL RATE AND TO ADD THESE LATE PAYMENT CHARGES TO ANY PAYMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-113, R.C.M. 1947, is amended to read as follows:

"**7-113. Powers and duties of building and loan associations.** Every building and loan association is a creature of the law having certain powers and duties of a natural person and as such has power:

(1) Of continual succession, by its corporate name;

(2) To sue and be sued, in any court;

(3) To make and use a common seal and alter same at pleasure;

(4) To appoint such officers or agents as the business of the corporation may require, and to allow them suitable compensation;

(5) To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

(6) Such associations shall have power to issue stock to members on such terms and conditions as the constitution and bylaws may provide, but no association shall issue preferred stock.

(7) To assess and collect from members dues on stock and interest on loans at the times and in the amount as provided for in the constitution and bylaws. The combined total of the amounts paid to an association for interest, commission, bonus, discount and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid

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interest, *principal* payments *or both,* from the time such payments are due. Interest, not exceeding the lawful contract rate, may also be charged and collected on delinquent stock payments when such unpaid payments are credited with dividends. Said interest shall in no event be at a rate exceeding the rate *percent* of the dividend declared on the same unpaid stock payments. No association shall charge or collect from any stockholder, member or borrower, any fines, premiums, or penalties of any kind whatsoever*; except that a late payment penalty not to exceed five dollars ($5) may be charged for payments more than fifteen (15) days late.* Any officer, agent or employee of any association collecting or attempting to collect any penalty, fine or premium of any kind whatsoever *except the late payment penalty* or any interest at a rate higher than provided in the note or other evidence of debt *or* in this act, shall be guilty of a misdemeanor.

(8) To permit members to withdraw all or part of their stock credits at such times and upon such terms, as the constitution and bylaws may provide; provided that no charge or fee, except as herein provided, shall be made against any member who withdraws his stock, after having given thirty (30) days' notice of such withdrawal; provided, also, that no fine of any description shall be made upon the par value of such stock or upon the declared dividends because of such withdrawal. Any member who withdraws his stock or whose stock is matured, shall be entitled to receive all dues paid in and all dividends declared less interest, if any, as provided in subsection (7), less a reasonable membership fee not exceeding two *percent (2%)* of the par value of each share of stock and less a prorata share of all losses, if any, which have occurred, and no other fine or assessments shall be made against such stock. Applications for withdrawal are to be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of the matured stock and of the withdrawals in the order registered; provided, however, that the other half of such collections each month may be used for the payment of withdrawals other than in the order registered, but no member shall receive more than one hundred dollars ($100.00) in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges.

(9) To cancel shares of stock upon which all credits have been withdrawn, or upon which loans have been canceled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue such shares as new stock.

(10) To issue stock to minors and permit the same to be withdrawn as other stock, and the receipt of such minor shall be a valid acquittance if his rights have been fully secured to him.

(11) To acquire, hold, encumber and convey such real estate and personal property as may be necessary for the transaction of its business, or necessary to enforce or protect its securities. Provided, not over ten

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percent (10%) of the assets of any association shall be invested in home office buildings, furniture and fixtures. Also ownership of other real property acquired in any manner or for any purpose shall not be held for more than five (5) years, except by permission of the superintendent of banks.

(12) To borrow money, only when necessary not exceeding twenty *percent (20%)* of its assets except when borrowing from the federal home loan bank as hereinafter provided, and issue its promissory note therefor; provided, that the assets and securities of an association shall not be pledged or hypothecated to secure its borrowed money or for any other purpose, without the consent of the superintendent of banks. However, if the superintendent of banks determines that it is advisable to pledge assets in order that funds may be secured he may authorize such pledging or hypothecation; but in no event shall the margin of security pledged exceed twenty-five *percent (25%)* of the funds so borrowed except when funds are borrowed from the federal home loan bank; an association may borrow money from the federal home loan bank upon such terms as may now or hereafter be required by the federal home loan bank, and to execute the promissory note of the corporation therefor, and to pledge or hypothecate any of the assets of the corporation to secure the repayment of said loan, with interest, in accordance with the Federal Home Loan Bank Act, and the rules and regulations adopted or to be adopted thereunder.

(13) To make loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed seventy-five *percent (75%)* of the actual value of such real estate, and upon such terms and conditions as may be provided in the constitution and bylaws; provided, however, that in all cases where the promissory note, or other written evidence of the loan made by any building and loan association required the payment of said loan, or total aggregate sum of principal and interest in periodic installments, said promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each periodic payment; provided, further, that when the note or other evidence of debt does not require the payment of said loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest to be charged the borrower.

Provided, however, that in all notes and mortgages now in force which do not specify the actual rate of interest charged the borrower upon the unpaid balance of the principal at each periodic payment, all payments made on the said notes must be distributed by crediting the same, first, upon the interest on the unpaid balance of the loan at the rate actually earned under the terms of the notes and mortgages, and the remainder upon the principal of the loan, and no charges or deductions from any of said periodic payments shall be permitted by any such association not specifically provided for in said promissory note or other evidence of such loan *except the late payment penalty and the additional interest charge on late payments.*

(14) To cancel such loans and release the securities on such terms as the board of directors may provide. But any borrower may have his loan canceled upon the following terms, to wit:

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By paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in and the dividends credited.

(15) To invest the money of the association in:

(a) The bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) The bonds and warrants of any state and of any county, city or school district of the state of Montana;

(c) The obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) Improved real estate which has been sold under contract, including suburban homes, but not including farm lands or mining property; provided, however, that the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed fifteen *percent (15%)* of its assets; and provided further, that in no specific case shall the amount so invested exceed eighty-five *percent (85%)* of the price stipulated in the contract of sale or eighty-five *percent (85%)* of the value of the property so purchased, whichever is the lesser;

(e) Not to exceed ten *percent (10%)* of the association assets in other bonds and securities.

(16) To loan money to other building and loan associations;

(17) To make such semiannual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as herein provided;

(18) To amend its articles of incorporation by changing the name, place of business, the number of directors; to increase or decrease the capital stock and provide for its own continual succession by a majority vote of its directors; provided that no such amendments shall be effected until first approved by the superintendent of banks;

(19) To dissolve the corporation in accordance with the provisions of this chapter;

(20) To provide by constitution and bylaws, adopted or amended, by its board of directors for the proper exercise of the powers herein granted and the conduct and management of its affairs;

(21) All such other powers as are necessary and proper to enable such corporation to carry out the purpose of its organization.

(22) Any two (2) or more building and loan associations, by and with the consent and approval of the superintendent of banks, may consolidate and unite and become incorporated in one (1) body, with or without any dissolution or division of the funds or property of any such association, or any such association may transfer its engagements, funds and property to any like association upon such terms as may be agreed upon by a major-

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ity vote of the respective board of directors, and ratified by a two-thirds (⅔) vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, said notice to state the object of the meeting. No such transfer shall prejudice any right of any creditor of such association."

Approved April 9, 1975.

CHAPTER NO. 338

AN ACT PROHIBITING A CHANGE OF USE FOR CERTAIN WATER RIGHTS FROM AGRICULTURAL TO INDUSTRIAL; AMENDING SECTION 89-892, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-892, R.C.M. 1947, is amended to read as follows:

"**89-892. Changes in appropriation rights.** (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage *except as permitted under this section and approved by* the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882 (2), and hearings shall be held in accordance with section 89-883.

(3) An appropriator of more than fifteen (15) cubic feet per second may not change the purpose of use of an appropriation right from an agricultural use to an industrial use."

Approved April 9, 1975.

CHAPTER NO. 339

AN ACT TO PROVIDE AN ASSESSMENT FOR VIOLATION OF CHAPTER 15 OF TITLE 26, RELATING TO CONSTRUCTION AND HYDRAULIC PROJECTS AFFECTING FISH AND GAME.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 26-1509 that reads as follows:

26-1509. Penalty — fine — restoration. An agency, under section 26-1502, violating provisions of this chapter shall be assessed a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500), for each day of continuing violation, but not more than a total of one thousand dollars ($1,000); and in addition, at the discretion of the court, the agency shall restore the damaged stream to its prior condition. Employees of an agency, acting in the ordinary course of their employment under directions of a superior, are not liable for violations under this section. The commission may institute and maintain in the name of the state enforcement proceedings under this section. All fines assessed under this act shall be deposited in the earmarked revenue fund for the use of the department.

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 9, 1975.

CHAPTER NO. 340

AN ACT AMENDING SECTION 84-4919, R.C.M. 1947, TO ALLOW TAXPAYERS AN AUTOMATIC TWO MONTH EXTENSION OF TIME FOR FILING INCOME TAX RETURNS; TO CLARIFY EXISTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4919, R.C.M. 1947, is amended to read as follows:

"**84-4919. Time for filing — affidavit — forms — extensions of time for filing.** Returns shall be made to the department on or before the fifteenth day of the fourth month following the close of the *taxpayer's* fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April *following the close of the calendar* year. *Each return* shall set forth such facts as the department may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer *of* the obligation *to make* any return required *under this law. Every* taxpayer liable for a tax under this law shall pay a minimum tax of one dollar ($1.00).

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Effective with returns to be filed for taxable years ending on and after December 31, 1974, an automatic two (2) month extension of time for filing a return is allowed, provided that on or before the due date of the return, an application is made on forms available from the department, or in writing to the department. The department may grant an additional extension of time for filing a return whenever in its judgment good cause exists, and the department shall keep a record of every such extension and the reason therefor. Except in the case of members of the Armed Forces of the United States and persons living or traveling outside the United States or Puerto Rico, no extension may be granted for more than six (6) months from the due date of the return prescribed in the preceding paragraph of this section."

Section 2. This act is effective upon passage and approval.

Approved April 9, 1975.

CHAPTER NO. 341

AN ACT TO EXEMPT MONEYS AND CREDITS FROM TAXATION BY AMENDING SECTIONS 84-202, 84-301 AND 84-308, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes,

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rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(2) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(3) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(4) Moneys and credits are exempt from taxation."

Section 2. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five *(a)* of this section,

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all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. *(a)* All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

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Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided,

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further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. All property not included in the eight (8) preceding classes."

Section 3. Section 84-308, R.C.M. 1947, is amended to read as follows:

"**84-308. Basis for imposition of taxes on moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state department of revenue shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes."

Approved April 9, 1975.

CHAPTER NO. 342

AN ACT EXTENDING THE VIETNAM VETERAN'S BONUS TO ANY SERVICEMAN WHO SERVED DURING THE VIETNAM WAR AND WHO WAS TOTALLY DISABLED UPON DISCHARGE; AMENDING SECTION 77-2502, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2502, R.C.M. 1947, is amended to read as follows:

"**77-2502. Purpose — honorarium granted.** (1) In recognition and appreciation of the valor and devotion of the persons who by their military service discharged the obligation of the state of Montana to contribute from its manpower to the defense of the republic in the prosecution of

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the Vietnam War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants to each such person an honorarium, or adjusted compensation, in a sum to be computed as provided in this section.

(2) Each resident of Montana who was in military service at any time during the Vietnam War, and during part or all of the period of such service was in the Vietnam area, is granted the sum of eighteen dollars and seventy-five cents ($18.75) for each month and major fraction of a month of such service in the Vietnam area. For the purpose of this subdivision:

(a) any serviceman who, while on active duty in the Vietnam area during the Vietnam War, suffered disease or injury from any cause whatsoever, including injury from exposure to weather conditions, and in line of duty, and is hospitalized therefor by any of the military forces, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, wherever situated;

(b) any serviceman who was taken prisoner by the enemy in the Vietnam area, and who was classified by the department of defense as a prisoner of war, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously so classified; but

(c) each such prisoner of war shall be paid not less than seven hundred fifty dollars ($750), and no serviceman shall be paid, under any of the provisions of this subdivision, more than seven hundred fifty dollars ($750).

(3) The surviving spouse, children, or parents, as the case may be of, any serviceman who shall have died in line of duty while in military service in the Vietnam area during the Vietnam War, or who shall have died from any cause attributable to his military service, in the Vietnam area in line of duty, as shown by the records of the United States veterans administration, prior to receiving a payment under this section, or who is officially listed as missing in action, shall be paid the amount to which such deceased or missing serviceman would have been entitled had he received such payment, or if that amount is less than seven hundred fifty dollars ($750), then such surviving spouse, children, or parents, as the case may be, shall be paid the sum of seven hundred fifty dollars ($750) and no more.

(4) Each resident of Montana who was totally disabled by a service-connected disability as certified by the veterans administration for service in the Vietnam area shall be paid the sum of seven hundred fifty dollars ($750).

(5) Notwithstanding any other provisions of this law:

(a) a person who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the

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military forces in the Vietnam War, shall be paid by the state of Montana only the excess, if any, of the aggregate amount to which he would otherwise be entitled hereunder, over and above the amount he receives or is entitled to receive from such other state or territory; and

(b) no payment shall be made under this law to any person who has been dishonorably discharged from military service and has not been restored by proper authority to an honorable status, or to any person still in service who is in a dishonorable status and has not been restored by proper authority to an honorable status at the time of payment."

Approved April 9, 1975.

CHAPTER NO. 343

AN ACT TO AMEND SECTION 25-226, R.C.M. 1947, TO INCREASE THE FEES AND MILEAGE PAYABLE TO THE SHERIFF FOR SERVICE OF PROCESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-226, R.C.M. 1947, is amended to read as follows:

"**25-226. Fees of sheriff.** (1) For the service of summons and complaint on each defendant, *two dollars ($2)*;

For levying and serving each writ of attachment of execution on real or personal property, *two dollars ($2)*;

For service of attachment on the body or order of arrest on each defendant, *two dollars ($2)*;

For the service of affidavit, order, and undertaking in claim and delivery, *two dollars ($2)*;

For serving a subpoena, *one dollar ($1)* for each witness summoned;

For serving writ of possession or restitution, *four* dollars *($4)*;

For trial of the right of property or damages, including all services except mileage, *five* dollars *($5)*;

For taking bond or undertaking in any case authorized by law, *two* dollars *($2)*;

For serving every notice, rule or order, *two* dollars *($2)*, for each person served;

For copy of any writ, process or other paper when demanded or required by law, *twenty-five* cents *(25¢)* for each *page*;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, *two* dollars *($2)*;

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(2) For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed *ten* dollars *($10)* per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, *or airline,* and when travel is other than by railroad, *or airline,* he shall receive *a mileage allowance as defined in section 59-801* for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

(4) Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 16-2723 of this code. Nor shall this act apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time, or when any paper or papers are served on more than one person on the same trip, but one mileage must be allowed or charged, and in the service of subpoenas, but one mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage must be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service. When two or more officers travel in the same automobile in the discharge of any duty but one mileage shall be allowed."

Approved April 9, 1975.

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CHAPTER NO. 344

AN ACT TO AUTHORIZE ALTERNATIVE FORMS OF LOCAL GOVERNMENT PARTIALLY IMPLEMENTING ARTICLE XI, SECTIONS 3 AND 5 OF THE 1972 MONTANA CONSTITUTION AND PROVIDING FOR A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. Title 47A, Part 3, Chapter 2 that reads as follows:

PART 3, CHAPTER 2
ALTERNATIVE FORMS OF LOCAL GOVERNMENT

47A-3-201. Declaration of purpose. (1) The purpose of this chapter is to comply with Article XI, section 3 (1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) This chapter establishes the alternative forms of government for cities, towns, counties, and consolidated governments. This chapter shall be liberally construed to facilitate the adoption of a form of local government. The procedure to adopt, amend, or abandon these forms is provided in sections 16-5101 et. seq.

47A-3-202. Adoption of alternative forms. Each local government in the state shall adopt one of the alternative forms of government provided for in this chapter including one of each sub-option authorized: the commission-executive form (which may also be called the "council-executive", the "council-mayor", or the "commission-mayor" form), the commission-manager form (which may also be called the "council-manager" form), the commission form, the commission-chairman form, the town meeting form, or the charter form.

47A-3-203. Commission-executive form. (1) The commission-executive form (which may be called the "council-executive", the "council-mayor", or the "commission-mayor" form) consists of an elected commission (which may be referred to as the "council" and one elected executive (who may be referred to as the "mayor") who is elected at large.

(2) The executive shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer affairs of the local government;

(d) carry out policies established by the commission;

(e) recommend measures to the commission;

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(f) report to the commission on the affairs and financial condition of the local government;

(g) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(h) report to the commission as the commission may require;

(i) attend commission meetings and may take part in discussions;

(j) execute the budget adopted by the commission;

(k) appoint, with the consent of the commission, all members of boards; except, the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The executive:

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive.

(b) The executive may:

(i) appoint and remove all employees of the local government; or

(ii) appoint and remove, with the consent of a majority of the commission, all employees of the local government; or

(iii) appoint, with the consent of a majority of the commission, all department heads. The executive may remove department heads and may appoint and remove all other department employees; or

(iv) appoint and remove, with the consent of a majority of the commission, all department heads. The executive may appoint and remove all other employees of the local government.

(c) The executive may:

(i) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission; or

(ii) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(iii) sign all ordinances and resolutions with no veto power.

(d) The executive may:

(i) prepare the budget and present it to the commission for adoption; or

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(ii) prepare the budget in consultation with the commission and department heads.

(e) The executive may:

(i) exercise control and supervision of the administration of all departments and boards; or

(ii) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

(f) A financial officer (who may be called the "treasurer"):

(i) shall be elected; or

(ii) shall be appointed by the executive with the consent of the council; or

(iii) shall be selected as provided by ordinance; or

(iv) may, at the discretion of the commission, be selected as provided by ordinance.

(g) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(h) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(i) The commission shall have a chairman who shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance.

(j) The presiding officer of the commission shall be:

(i) the chairman of the commission who may vote as other members of the commission; or

(ii) the executive who may vote as the commissioners; or

(iii) the executive who shall decide all tie votes of the commission, but shall have no other vote. The chairman of the commission shall preside if the executive is absent; or

(iv) the executive, but he may not vote.

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(k) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(l) The size of the commission, which shall be a number not less than three (3), shall be established when the form is adopted by the voters, and;

(i) community councils of at least three (3) members shall be elected within each district to advise the comissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(m) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-204. Commission-manager form. (1) The commission-manager form (which may be called the "council-manager" form) consists of an elected commission (which may be called the "council") and a manager appointed by the commission who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

(2) The manager shall be appointed by the commission for an indefinite term on the basis of merit only, and removed only by a majority vote of the whole number of the commission.

(3) The manager shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform the duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the local government;

(d) direct, supervise, and administer all departments, agencies and offices of the local government unit except as otherwise provided by law or ordinance;

(e) carry out policies established by the commission;

(f) prepare the commission agenda;

(g) recommend measures to the commission;

(h) report to the commission on the affairs and financial condition of the local government;

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(i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(j) report to the commission as the commission may require;

(k) attend commission meetings and may take part in the discussion, but he may not vote;

(l) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(m) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance. Employees appointed by the manager and his subordinates shall be administratively responsible to the manager;

(n) appoint members of temporary advisory committees established by the manager.

(4) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(5) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager, solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

(6) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:

(i) the chairman with the consent of the commission; or

(ii) the manager with the consent of the commission; or

(iii) the commission.

(b) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(c) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

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(ii) nonpartisan basis as provided in this title.

(d) The chairman of the commission shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) elected by the qualified electors for a term of office; or

(iii) selected as provided by ordinance.

(3) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(7) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-205. Commission form. (1) The commission form consists of an elected commission (which may also be called the "council") and other elected officers as provided in this section. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

(2) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

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(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The chairman of the commission, who may be referred to as the "mayor", shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission. The chairman shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance; or

(iii) elected directly by the voters for a term established by ordinance.

(d) The commission:

(i) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(ii) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3 (2), of the Montana constitution, may not exceed six (6) years. Terms of office shall be established when the form is adopted by the voters.

(3) In county and consolidated local governments, the plan of govern-

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ment submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

(a) A legal officer (who may be called the "county attorney"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(b) A law enforcement officer (who may be called the "sheriff"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(c) A clerk and recorder:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(d) A clerk of district court:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

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(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(e) A treasurer:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(f) A surveyor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(g) A superintendent of schools:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(h) An assessor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

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(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(i) A coroner:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(j) A public administrator:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(k) An auditor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(4) Local governments that adopt this form shall have general government powers.

47A-3-206. Commission-chairman form. (1) The commission-chairman form consists of an elected commission (which may also be referred to as the "council"), and a commission chairman (who may also be referred

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to as "mayor" or as "president") elected by the members of the commission from their own number.

(2) The commission chairman (who may also be referred to as "mayor") shall be elected by the members of the commission from their own number to serve at the pleasure of the commission. He shall: be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government, and:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the local government;

(d) direct, supervise, and administer all departments, agencies, and offices of the local government, except as otherwise provided by law or ordinance;

(e) carry out policies established by the commission;

(f) prepare the commission agenda;

(g) recommend measures to the commission;

(h) report to the commission on the affairs and financial condition of the local government;

(i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(j) report to the commission as the commission may require;

(k) attend commission meetings and may take part in discussions;

(l) execute the budget adopted by the commission;

(m) appoint with the consent of the commission all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;

(n) appoint with the consent of a majority of the commission all department heads. The chairman may remove department heads and may appoint and remove all other employees;

(o) prepare the budget and present it to the commission for adoption;

(p) exercise control and supervision over the administration of departments and boards.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

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(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) nominated by districts in which candidates must reside and which are apportioned by population, but elected at large; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The commission chairman:

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman.

(d) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(e) The size of the commission, which shall be a number of not less than five (5), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(f) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-207. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator. The town meeting form may be adopted only by incorporated cities or towns of less than two thousand (2,000) persons as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent

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enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this section. Any unit of local government which adopts this form may retain it even though its population increases to more than two thousand (2,000).

(2) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

(3) (a) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town chairman or upon petition of ten percent (10%) of the qualified electors of the town, but in no case by less than ten (10) qualified electors.

(b) All qualified electors of the town may attend the town meeting, take part in the discussion and vote on all matters coming before the town meeting. Others may attend but shall not vote nor take part in the discussion except by a majority vote of the town meeting.

(c) A quorum shall consist of at least ten percent (10%) of the qualified electors of the town but a higher quorum requirement may be established by a majority vote of the town meeting.

(d) The election of town officials shall be nonpartisan and shall be by a plurality of those qualified electors present and voting. All other voting in the town meeting shall be by a simple majority of those qualified electors present and voting.

(e) Election of officials shall be by secret ballot. Other voting shall be by secret ballot upon the request of at least five members of the town meeting.

(4) An agenda of the town meeting and a list of all elective and appointive offices to be filled shall be prepared by the town chairman who shall post notice at least two (2) weeks prior to the convening of all annual and special town meetings. Upon written petition of at least ten percent (10%) of the qualified electors of the town, but not less than ten (10) qualified electors, the town chairman shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting except no matter dealing with finance or taxation shall be considered under "other business".

(5) The town meeting shall elect a town chairman for a term of not less than one (1) year or more than two (2) years. An unexpired term of a town chairman shall be filled at the next annual or special town meeting.

(6) The town chairman shall be the chief executive officer of the town and he shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the town;

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(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards;

(l) carry out policies established by the town meeting.

(7) Compensation of the town chairman shall be established by ordinance but shall not be reduced during the current term of the town chairman.

(8) Permanent committees to advise the town chairman and/or the town meeting may be established and dissolved by ordinance. The town chairman may establish temporary committees to advise him.

(9) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The town meeting shall:

(i) elect a town meeting moderator for a term of one (1) year who shall be the presiding officer of all annual and special town meetings but who shall have no other governmental powers; or

(ii) designate the town chairman as presiding officer of all annual and special town meetings.

(b) The town chairman:

(i) shall appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion; or

(ii) may appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town. The administrative assistant shall be answerable solely to the town chairman and the town chairman may delegate powers to the administrative assistant at his discretion.

(10) The first agenda of the first town meeting following the adoption of this form shall be established by the local study commission. At that town meeting the chairman of the local study commisssion shall preside

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over the election of the presiding officer of the town after which the presiding officer of the town shall preside.

(11) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers.

47A-3-208. Charter form. (1) The purpose of this section is to comply with Article XI, section 5 (1), of the Montana constitution, which provides: "(1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

(3) A charter form of government shall possess self-government powers.

(4) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(5) The charter shall provide for an elected legislative body, called a commission or council, or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(6) The charter shall provide for the nomination and election of commissions at-large, or by districts in which candidates must reside and which are apportioned by population, or by a combination of districts in which candidates must reside and which are apportioned by population and at-large.

(7) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office, except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote, the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as above, or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(8) The charter may establish other legislative, administrative, and organizational structures.

(9) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

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(10) Charter provisions may not conflict with the provisions of Title 47-A, Part 7 which establish statutory limitations on the powers of self-government units.

(11) Charter forms are subject to state laws establishing election, initiative and referendum procedures and charters shall not contain provisions establishing election, initiative and referendum procedures.

(12) The charter shall not contain provisions establishing or modifying local court systems.

(13) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

(14) The charter may contain prohibitions on the exercise of power by a unit of local government.

(15) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(16) The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

(17) The listing of charter provisions in this section shall not be construed to prevent the inclusion of additional provisions in charters.

(18) A charter may be amended only as provided by state law.

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** This act is effective May 2, 1977.

Approved April 9, 1975.

CHAPTER NO. 345

AN ACT ESTABLISHING THE POWERS AND LIMITATIONS THEREON OF THOSE LOCAL GOVERNMENT UNITS WHICH ADOPT THE SELF-GOVERNMENT POWERS AUTHORIZED BY ARTICLE XI, SECTION 6 OF THE MONTANA CONSTITUTION AND PROVIDING FOR A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. Title 47A, Part 7, that reads as follows:

PART 7, CHAPTER 1
POWERS OF SELF-GOVERNMENT LOCAL GOVERNMENTS

47A-7-101. Self-government powers. As provided by Article XI,

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section 6 of the Montana constitution a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include, but are not limited to, the powers granted to general power governments by Title 47A, Part 5.

47A-7-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include, but are not limited to, those services and functions which general power government units are authorized to provide or perform by Title 47A, Part 6.

47A-7-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function, except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

47A-7-104. Legislative power vested in legislative bodies. The powers of a self-government unit unless otherwise specifically provided are vested in the local government legislative body and may be exercised only by ordinance or resolution.

47A-7-105. State law applicable. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner and subject to the limitations provided in this Title.

47A-7-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

PART 7, CHAPTER 2
LIMITATIONS ON SELF-GOVERNMENT LOCAL GOVERNMENTS

47A-7-201. Powers denied. A local government unit with self-government powers is prohibited the exercise of the following:

(1) Any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) Any power that applies to or affects the provisions of Title 41 (labor), chapter 16 of Title 59 (collective bargaining for public employees), Title 87 (unemployment compensation), or Title 92 (workmen's compensation) except that subject to the provisions of those titles it may exercise any power of a public employer with regard to its employees;

(3) Any power that applies to or affects the public school system except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise

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any power which it is required by law to exercise regarding the public school system;

(4) Any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) Any power that establishes a rate or price otherwise determined by a state agency;

(6) Any power that applies to or affects any determination of the state department of lands with regard to any mining plan, permit, or contract;

(7) Any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) Any power that defines as an offense conduct made criminal by state statute, or which defines an offense as a felony, or which fixes the penalty or sentence for a misdemeanor in excess of a fine of five hundred dollars ($500) or six (6) months imprisonment or both such fine and imprisonment, except as specifically authorized by statute;

(9) Any power that applies to or affects the right to keep or bear arms, except that it has the power to regulate the carrying of concealed weapons;

(10) Any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) Any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 66, (professions and occupations) as prerequisites to the carrying on of a profession or occupation.

(12) Any power that applies to or affects Title 26 (fish and game).

47A-7-202. Powers requiring delegation. A local government unit with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) The power to authorize a tax on income or the sale of goods or services. This section shall not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) The power to regulate private activity beyond its geographic limits;

(3) The power to impose a duty on another unit of local government, except that nothing in this limitation shall affect the right of a self-government unit to enter into and enforce an agreement on inter-local cooperation;

(4) The power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) The power to regulate any form of gambling, lotteries, or gift enterprises.

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47A-7-203. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules and regulations governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

47A-7-204. Mandatory provisions. A local government unit with self-government powers is subject to the following provisions. These provisions are a prohibition on the self-government unit acting other than as provided:

(1) All state laws providing for the incorporation or disincorporation of cities and towns, for the annexation, disannexation or exclusion of territory from a city or town, for the creation, abandonment or boundary alteration of counties and for city-county consolidation;

(2) Title 16, chapter 51;

(3) All laws establishing legislative procedures or requirements for units of local government;

(4) All laws regulating the election of local officials;

(5) All laws which require or regulate planning or zoning;

(6) Any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(7) Any law regulating the budget, finance or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply;

(8) Title 93, chapter 99.

Section 2. **Severability clause.** If any part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** This act is effective May 2, 1977.

Approved April 9, 1975.

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CHAPTER NO. 346

AN ACT TO AMEND SECTION 84-709.1, R.C.M. 1947, TO PROVIDE THAT PROCEEDINGS FOR JUDICIAL REVIEW OF A TAX APPEAL BOARD DECISION MUST BE INSTITUTED IN THE COUNTY WHERE THE TAXABLE PROPERTY IS LOCATED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-709.1, R.C.M. 1947, is amended to read as follows:

"**84-709.1. Judicial review of contested cases.** (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this act.

(2) Proceedings for review shall be instituted by filing a petition in district court *in the county wherein the taxable property or some portion thereof is located, except the taxpayer may, at his option, file in the district court of the first judicial district,* and serving a copy *of the petition* on the state tax appeal board, within thirty (30) days after service of the final decision of the state tax appeal board, or if a rehearing is requested within thirty (30) days after the decision thereon. All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such *proceedings.*

(3) Notwithstanding any other provision, proceedings for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission shall be instituted in the district court of the first judicial district."

Approved April 9, 1975.

CHAPTER NO. 347

AN ACT TO AMEND THE STATE EMPLOYEES' GROUP INSURANCE PROGRAM; CLARIFYING THE STATUS OF LEGISLATIVE PARTICIPATION IN SUCH PROGRAM; AMENDING SECTION 59-1501, R.C.M. 1947; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1501, R.C.M. 1947, is amended to read as follows:

"**59-1501. Definitions.** As used in this act:

(1) "Department" means the department of administration of the state of Montana provided for in chapter 2 of Title 82A.

(2) "Employee" means an employee of the state of Montana, *specifi-*

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cally including a member or employee of the legislative branch of state government, who is eligible for insurance coverage pursuant to section 11-1024. The term "employee" does not include employees of counties, cities, towns and school districts of the state of Montana."

Section 2. This act is effective upon passage and approval.

Approved April 9, 1975.

CHAPTER NO. 348

AN ACT TO AMEND SECTION 10-1213; TO DELETE THE REQUIREMENT THAT THE POLICE IMMEDIATELY NOTIFY A PROBATION OFFICER IN ALL CASES OF APPREHENSION OF A YOUTH.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1213, R.C.M. 1947, is amended to read as follows:

"**10-1213. Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be held in custody, then the peace officer must notify the probation officer without undue delay, *and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody.* If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and completely separated from adult offenders."

Approved April 9, 1975.

CHAPTER NO. 349

AN ACT TO AMEND THE STATUTE PERTAINING TO THE COST OF LIVING INCREASES FOR THE HIGHWAY PATROLMEN'S RETIREMENT SYSTEM, TO PROVIDE A MINIMUM FOR RETIRED PATROLMEN AND FOR THOSE COMPELLED TO RETIRE BECAUSE OF THE COMPULSORY RETIREMENT AGE; AMENDING SECTION 31-231, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 31-231, R.C.M. 1947, is amended to read as follows:

"31-231. Cost of living. (1) "Index" for the purposes of this section means, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959=100) compiled by the bureau of labor statistics, United States department of labor or successor agency.

(2) Effective July 1, 1974, every disability and survivorship retirement allowance then payable to a retired member or his beneficiary shall be increased by a percentage equal to one-half (½) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of the retirement of the member or the date preceding the date of the deceased member whichever is more.

(3) Effective July 1, 1974, every service retirement allowance granted after twenty (20) years of service to the patrol and payable on July 1, 1974, shall be increased by a percentage equal to one-half (½) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of retirement of the member.

(4) Retroactive to July 1, 1974, every survivorship retirement allowance then payable to the beneficiary of a contributor, not heretofore covered in (2), shall be increased by a percentage equal to one-half (½) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of the retirement of the member or the date preceding the date of the deceased member whichever provides the greater benefit.

(5) Retroactive to July 1, 1974, every service retirement allowance granted to a patrolman, who was compelled to retire because of "compulsory retirement age" (31-201 (6)) and did not qualify under (3) of this section, and payable on July 1, 1974, shall be increased by a percentage equal to one-half (½) of the percentage increase in the index for 1973 from the index for the calendar year preceding the effective date of retirement of the member.

(6) For the purposes of this section the minimum increase granted in subsections (2), (3), *(4), and (5)* above shall be the amount when added to the allowance payable on July 1, *1975*, that shall total *three* hundred dollars *($300)* per month."

Approved April 9, 1975.

CHAPTER NO. 350

AN ACT TO INCREASE THE STATE CONTRIBUTION TO THE HIGHWAY PATROLMEN'S RETIREMENT SYSTEM; AND AMENDING SECTION 31-210, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 31-210, R.C.M. 1947, is amended to read as follows:

"**31-210. Contributions by the state of Montana.** The state of Montana shall annually contribute to the account an amount equal to *sixteen percent (16%)* of the salaries, paid to the highway patrolmen who are covered by this account, *from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.*"

Approved April 9, 1975.

CHAPTER NO. 351

AN ACT AMENDING SECTION 32-2190, R.C.M. 1947, TO REQUIRE FRONT AND SIDE FACING REFLECTORS ON BICYCLES IN USE AT NIGHTTIME AND ENCOURAGING A SIX (6) FOOT HIGH WARNING FLAG IN ADDITION TO EQUIPMENT NOW REQUIRED; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2190, R.C.M. 1947, is amended to read as follows:

"**32-2190. Lamps and other equipment on bicycles.** (a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500) feet to the front. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to *rear-facing reflectors required by this section.*

(b) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall be mounted on the front and back of each pedal.

(c) Every bicycle when in use at nighttime shall be equipped with either tires with retroflective sidewalls or reflectors mounted on the spokes of each wheel. Spoke mounted reflectors shall be within 76 mm. (3.0 in.) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red.

(d) Reflectors required by this section shall be of a type approved by the division of motor vehicles.

(e) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(f) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than six (6) feet above the roadway

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when the bicycle is standing upright. The flag shall be fluorescent orange in color."

Section 2. **Effective date.** This act is effective July 1, 1976.

Approved April 9, 1975.

CHAPTER NO. 352

AN ACT TO AMEND SECTIONS 91A-3-803 AND 91A-3-805, R.C.M. 1947, RELATING TO CLAIMS AGAINST A DECEDENT'S ESTATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-3-803, R.C.M. 1947, is amended to read as follows:

"91A-3-803. Limitations of presentation of claims — exception. (1) All claims against a decedent's estate with the exception of claims *for taxes and claims* founded on tort which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) within four (4) months after the date of the first publication of notice to creditors if notice is given in compliance with section 91A-3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state; or

(b) within three (3) years after the decedent's death, if notice to creditors has not been published.

(2) All claims against a decedent's estate with the exception of claims *for taxes and claims* founded on tort which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) a claim based on a contract with the personal representative, within four (4) months after performance by the personal representative is due;

(b) any other claim, within four (4) months after it arises.

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

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(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance."

Section 2. Section 91A-3-805, R.C.M. 1947, is amended to read as follows:

"**91A-3-805. Classification of claims.** (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses *and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him*;

(c) *federal estate and Montana state estate and inheritance taxes;*

(d) debts with preference under federal *and Montana* law;

(e) other federal and Montana state taxes;

(f) all other claims.

(2) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due."

Approved April 9, 1975.

CHAPTER NO. 353

AN ACT TO AMEND SECTION 84-429.7, R.C.M. 1947, TO PROVIDE TAX INCENTIVE FOR INTRODUCTION OF SPRINKLER IRRIGATION SYSTEMS TO NONIRRIGATED FARM LANDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-429.7, R.C.M. 1947, is amended to read as follows:

"**84-429.7. Classification and appraisal — duties of the department of revenue.** *(1)* It is hereby made the duty of the state department of revenue to accomplish the following:

a. The classification of all taxable lands.

b. The appraisal of all taxable city and town lots.

c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state depart-

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ment of revenue. Such maps, plats, forms and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the state department of revenue.

It shall be the duty of the state department of revenue to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

(2) The department shall continue to assess, without consideration of any increase in productivity resulting from the introduction of a sprinkler type irrigation system, at the current rate all nonirrigated farm land and nonirrigated continuously cropped farm land for a period of three (3) years after introduction to the land of a sprinkler type irrigation system.

The records of this assessment shall be maintained in the office of the agent of the department in each county of this state and a copy sent to the department."

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from invalid applications.

Approved April 9, 1975.

CHAPTER NO. 354

AN ACT TO ESTABLISH PROCEDURES FOR THE COMPOSITION, SUBMISSION, AND PRINTING OF ARGUMENTS ADVOCATING APPROVAL OR REJECTION OF INITIATIVE AND REFERENDUM MEASURES, AND AMENDING SECTION 37-107, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 37-104.2 that reads as follows:

37-104.2. Committee advocating approval of a measure referred by the legislature — submission of argument. An argument advocating approval of a proposed constitutional amendment or of an act referred to the people by the legislature or by a petition for referendum shall be composed and submitted for printing by a committee created as follows: The president of the senate shall appoint one (1) senator known to favor the measure and the speaker of the house of representatives shall appoint one (1) representative known to favor the measure. The two (2) members shall appoint a third member who need not be a member of the legislature.

Section 2. There is a new R.C.M. section numbered 37-104.3 that reads as follows:

37-104.3. Committee advocating rejection of a measure referred by the legislature — submission of argument. An argument advocat-

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ing rejection of a proposed constitutional amendment or of an act referred to the people by the legislature shall be composed and submitted for printing by a committee created as follows: The president of the senate shall appoint one (1) senator and the speaker of the house of representatives shall appoint one (1) representative. Whenever possible, the members appointed shall be known to have opposed the measure. The two (2) members shall appoint a third member who need not be a member of the legislature.

Section 3. There is a new R.C.M. section numbered 37-104.4 that reads as follows:

37-104.4. Submission of arguments advocating rejection of an act of the legislature referred by petition. An argument advocating rejection of an act of the legislature referred to the people by a petition for referendum shall be composed and submitted for printing by the proponents of the petition.

Section 4. There is a new R.C.M. section numbered 37-104.5 that reads as follows:

37-104.5. Submission of arguments advocating approval of a measure proposed by a petition for initiative. An argument advocating approval of an act, constitutional amendment, or call of a constitutional convention by a petition for initiative shall be composed and submitted for printing by the proponents of the petition.

Section 5. There is a new R.C.M. section numbered 37-104.6 that reads as follows:

37-104.6. Submission of argument advocating rejection of a measure proposed by an initiative petition. An argument advocating rejection of an act, constitutional amendment, or call of a constitutional convention proposed by a petition for initiative shall be composed and submitted for printing by a committee created as follows: The governor, attorney general, president of the senate, and speaker of the house shall each appoint a person known to favor rejection of the measure. The four (4) persons appointed shall appoint a fifth member known to favor rejection of the measure.

Section 6. There is a new R.C.M. section numbered 37-104.7 that reads as follows:

37-104.7. Arguments limited to five hundred (500) words — must be signed. Arguments submitted under this act are limited to five hundred (500) words. An argument must be signed by a majority of the committee responsible for its composition.

Section 7. There is a new R.C.M. section numbered 37-104.8 that reads as follows:

37-104.8. Time for submitting arguments. Arguments submitted under this act shall be filed in typewritten form with the secretary of state not less than eight (8) weeks before the election at which the measure is to be submitted to the people.

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Section 8. There is a new R.C.M. section numbered 37-104.9 that reads as follows:

37-104.9. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a measure to the adversary in argument on the day following the deadline for filing arguments under this act. The committees may prepare rebuttal arguments not longer than two hundred fifty (250) words in length that shall be filed in typewritten form with the secretary of state not less than seven (7) weeks before the election at which the measure is to be submitted to the people. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument shall be signed by a majority of the committee responsible for its preparation.

Section 9. There is a new R.C.M. section numbered 37-104.10 that reads as follows:

37-104.10. Type of arguments to be excluded from pamphlet — liability for libel. (1) The secretary of state shall reject an argument or other matter held by the attorney general to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; or any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex, or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voters' pamphlet.

(2) Nothing in this act relieves either an argument nor an author of an argument from civil or criminal responsibility for statements contained in an argument printed in the voters' pamphlet.

Section 10. Section 37-107, R.C.M. 1947, is amended to read as follows:

"**37-107. Printing and distribution of measures.** (1) The secretary of state shall furnish a copy of each of the proposed measures to be submitted to the people, and make requisition on the department of administration, for the printing and delivery to him of all proposed constitutional amendments, initiative, and referendum measures to be submitted to a vote of the people.

(2) The department of administration, shall, no later than five (5) weeks before any general or special election, at which any proposed law is to be submitted to the people, have printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on the official ballot. The department of administration shall call for bids and contract with the lowest responsible bidder for the printing of the proposed law to be submitted to the people.

(3) The proposed law to be submitted shall be printed and forwarded to the county clerk and recorder of each county.

(4) The number of proposed measures to be printed shall be at least five per cent (5%) more than the number of qualified electors, as shown by the registration lists of the several counties of the state at the last preceding general election.

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(5) The information to be printed shall be printed in the following order as applicable:

(a) the statement of the secretary of state;

(b) the statement of the attorney general;

(c) the title and body of the proposed measure;

(d) the manner in which the measure will appear on the ballot;

(e) the argument advocating approval of the measure;

(f) the argument advocating rejection of the measure;

(g) the argument rebutting the argument advocating approval; and

(h) the argument rebutting the argument advocating rejection.

(6) The secretary of state shall distribute to each county clerk, no later than four (4) weeks before the election at which the proposed measure(s) will be voted upon, a sufficient number of pamphlets to furnish one copy to every voter in his county. Each county clerk shall mail to each registered voter in the county at least one copy of the pamphlet within two (2) weeks from the date of his receipt of the pamphlets from the secretary of state."

Approved April 9, 1975.

CHAPTER NO. 355

AN ACT TO PROVIDE FOR THE CREATION OF URBAN TRANSPORTATION DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-4501 that reads as follows:

11-4501. Purpose. This act authorizes the establishment of urban transportation districts to supply transportation services and facilities to district residents and other persons.

Section 2. There is a new R.C.M. section numbered 11-4502 that reads as follows:

11-4502. Definitions. As used in this act:

(1) "Commissioners" means the board of county commissioners or other governing body of a county;

(2) "District" means any transportation district created under this act;

(3) "Board" means the board of transportation of any district created under this act.

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Section 3. There is a new R.C.M. section numbered 11-4503 that reads as follows:

11-4503. Petition — call for public hearing. (1) Proceedings for creation of a transportation district may be initiated by a petition, signed by not less than twenty percent (20%) of the qualified electors who reside within the proposed transportation district. The petition shall consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the address of each petitioner and shall include a map showing the limits of the proposed district. The complete petition shall be filed with the county clerk, who shall within thirty (30) days thereafter, carefully examine the same and attach to it a certificate under his official signature and the seal of his office. The certificate shall set forth: the total number of persons who are registered electors within the proposed transporation district, and which and how many of the persons whose names are on the petitions are qualified to sign such petition. If the petition is found to contain less than twenty percent (20%) of the signatures of the qualified electors of the transportation district, the petition shall be declared void.

(2) Provided the petition contains the signatures of twenty percent (20%) of the qualified electors of the proposed transportation district, the county clerk shall present the petition and his certificate to the commissioners at their first meeting held after he has attached his certificate.

(3) The commissioners shall thereupon examine the petition and shall by resolution call for a public hearing on the creation of such transportation district.

Section 4. There is a new R.C.M. section numbered 11-4504 that reads as follows:

11-4504. Notice and conduct of public hearing. (1) At the time fixed for the public hearing, the commissioners shall hear all testimony offered in support of and in opposition to any petition and the creation of the district. The hearings may be adjourned from time to time for the determination of additional information, or hearing petitioners or objectors, but no adjournment may exceed two (2) weeks after the date originally noticed and published for the hearing.

(2) A notice of the public hearing shall be published in a newspaper having general circulation within the proposed transportation district once each week for at least two (2) weeks, the last publication to be at least two (2) weeks prior to the hearing. If there is no newspaper having general circulation within the proposed district, the notice of public hearing shall be posted in at least three (3) public places within the proposed district for two (2) weeks prior to the hearing. The notice shall state the time, date, place, and purpose of the hearing and describe the boundaries of the proposed transportation district.

Section 5. There is a new R.C.M. section numbered 11-4505 that reads as follows:

11-4505. Resolution — election. (1) The commissioners, upon comple-

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tion of the public hearing, shall proceed by resolution to refer the creation of such district to the persons qualified to vote on such proposition. The commissioners may, in their resolution, designate whether a special election shall be held, or whether the matter shall be determined at the next general election.

(2) If a special election is ordered, the commissioners shall, in their order, specify the date for the election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws.

(3) At the election, the ballots shall contain the words:

"☐Transportation District — Yes

☐Transportation District — No"

The judges of the election shall certify to the commissioners the results of the election.

Section 6. There is a new R.C.M. section numbered 11-4506 that reads as follows:

11-4506. Transportation board — selection — composition. The district shall be governed by a transportation board. The transportation board shall consist of three (3) members appointed by a selection board composed of the commissioners and an equal number of representatives from the governing bodies of each incorporated city included or partially included in the district. The selection board shall also fill all vacancies occurring on the board. The selection board shall give public notice of its solicitation of applications for membership on the board. The notice shall be published in a newspaper having general circulation in the district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the appointment. If there is no newspaper having general circulation within the boundaries of the proposed district, the notice of solicitation shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the appointment. The appointed members shall serve until the first county general election after their appointment. Thereafter, the board members shall be elected. Any qualified elector in the district may file a petition of candidacy with the county clerk and recorder of the county where the district is located. No filing fee shall be required. All candidates shall file a nonpartisan petition for candidacy. The names of the six (6) candidates receiving the highest number of votes in the primary election shall be placed on the ballots in the county general election. The candidate receiving the highest number of votes in the county general election shall receive a four (4) year term on the board; the two (2) candidates receiving the next highest number of votes in the county general election shall receive two (2) year terms on the board. Thereafter, two (2) seats on the board shall be filled at every county general election. The candidate receiving the highest number of votes shall serve a four (4) year term, the candidate receiving the next highest number of votes shall serve a

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two (2) year term. The board members shall serve without pay except for necessary transportation expenses.

Section 7. There is a new R.C.M. section numbered 11-4507 that reads as follows:

11-4507. Powers of transportation board. (1) The board shall have all powers necessary and proper to the establishment, operation, improvement, maintenance and administration of the transportation district. The district shall primarily serve the residents within the district boundaries, but may authorize service outside the district boundaries where deemed appropriate.

(2) The board shall employ a qualified administrative officer for the district. The board shall give public notice of its solicitation of applications for a qualified administrative officer.

Section 8. There is a new R.C.M. section numbered 11-4508 that reads as follows:

11-4508. Budget — mill levy authorized. The board shall, annually, present its budget to the commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The commissioners shall, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said transportation district clearly sufficient to raise the amount certified by the board. The tax so levied for all transportation district purposes other than payment of bonded indebtedness shall not in any year exceed twelve (12) mills on each dollar of taxable valuation of property within said district.

Section 9. There is a new R.C.M. section numbered 11-4509 that reads as follows:

11-4509. Duties of county treasurer — warrants issued by board. The procedure for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex officio, the treasurer for the transportation district and who shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board and signed by a majority of its membership.

Section 10. There is a new R.C.M. section numbered 11-4510 that reads as follows:

11-4510. Bond issues authorized. A transportation district may borrow money by the issuance of general obligation or revenue bonds, or a combination thereof, to provide funds for the district, but the amount of bonds issued for such purpose and outstanding at any time shall not exceed five percent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

Section 11. There is a new R.C.M. section numbered 11-4511 that reads as follows:

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11-4511. Enlargement of district — procedures. The boundaries of any transportation district may be enlarged if fifty-one percent (51%) of the qualified electors of the area to be added to the existing district sign a petition requesting addition to such district; however, each addition must be approved by a majority vote of the transportation board. All property within any addition to the transportation district shall be subject to all existing indebtedness of the district.

Section 12. There is a new R.C.M. section numbered 11-4512 that reads as follows:

11-4512. Procedure for dissolving district. (1) Any transportation district may be dissolved upon presentation to the county commissioners of a petition signed by at least fifty-one percent (51%) of the qualified voters of such district. Upon the filing of such petition, the commissioners shall carefully examine the petition and, if it is found that the petition is in proper form, and bears the requisite number of signatures of qualified petitioners, the commissioners shall by resolution call for a public hearing on the dissolution of such transportation district. If such petition is found by the commissioners to be lacking in the number of signatures, the commissioners shall declare the petition void.

(2) A notice of such hearing shall be published in a newspaper having general circulation in the transportation district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation in the district, the notice of the hearing shall be posted in at least three (3) public places in the district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing.

(3) If upon such hearing the commissioners find that the district is not indebted beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing the order of dissolution, provided that at or before such time the board of said district certifies to the county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall be evenly divided between the county and any cities within or partially within the dissolved district.

Section 13. **Effective date.** This bill shall become effective upon its passage and approval.

Approved April 9, 1975.

CHAPTER NO. 356

AN ACT TO PROVIDE FOR ASSESSMENT OF FEES FOR THE PRE-

PARATION OF ENVIRONMENTAL IMPACT STATEMENTS UPON CERTAIN APPLICATIONS FOR WATER RIGHT PERMITS OR APPROVALS; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 89-8-102.2, that reads as follows:

89-8-102.2. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act (Title 69, chapter 65, R.C.M. 1947), and the application (or combination of applications) involves the use of ten thousand (10,000) or more acre feet per year or fifteen (15) or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in subsection (2) of this section. The department shall notify the applicant in writing within thirty (30) days of receipt of a correct and complete application (or a combination of applications), if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1) of this section, the applicant shall pay a fee based upon the estimated cost of constructing, repairing or changing the appropriation and diversion facilities according to the declining scale as follows: two percent (2%) of the estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of the estimated cost over one million dollars ($1,000,000) and up to twenty million dollars ($20,000,000); plus one-half of one percent (0.5%) of the estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (0.25%) of the estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-eighth of one percent (.125%) of the estimated cost over three hundred million dollars ($300,000,000). The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility and public need pursuant to the Montana Utility Siting Act (Title 70, chapter 8, R.C.M. 1947), and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(4) This act shall apply to all applications, pending or hereinafter filed, for which the department has not, as of the effective date of this act, commenced writing an environmental impact statement. This act shall not

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apply to any application the fee for which would not exceed two thousand five hundred dollars ($2,500).

(5) Failure to submit the fee as required by this section shall void the application(s).

Section 2. This act is effective upon its passage and approval.

Approved April 9, 1975.

CHAPTER NO. 357

AN ACT PROVIDING A SCHEDULE OF PENALTIES FOR VIOLATIONS OF THE NONGAME AND ENDANGERED SPECIES ACT; AMENDING SECTION 26-1808, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-1808, R.C.M. 1947, is amended to read as follows:

"**26-1808. Violation of act — misdemeanor — enforcement — disposition of unlawfully captured wildlife.** (1) Any person who violates the provisions of this act or whoever fails to procure or violates the terms of any permit issued thereunder shall be guilty of a misdemeanor.

(2) Upon a first conviction for a violation under this chapter, the court may fine the defendant not to exceed two hundred fifty dollars ($250). Upon a second such conviction, the defendant may be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed thirty (30) days, or both. Upon subsequent such convictions, the defendant shall be fined not less than five hundred dollars ($500) or more than one thousand dollars ($1,000), and in addition may be imprisoned in the county jail for any term not to exceed six (6) months.

(3) Any officer employed and authorized by the director or any peace officer of the state or of any municipality or county within the state shall have authority to enforce the provisions of this act.

(4) Wildlife seized under the provisions of this act shall be held by an officer or agent of the department pending disposition of court proceedings, and thereafter be forfeited to the state for disposition as the director may deem appropriate; provided, that, prior to forfeiture, the director may direct the transfer of wildlife so seized to a qualified zoological, educational, or scientific institution for safekeeping. The commission is authorized to issue regulations to implement this subsection."

Approved April 9, 1975.

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CHAPTER NO. 358

AN ACT REVISING THE PROVISIONS GOVERNING COAL MINING LEASES ON STATE LANDS; PROVIDING FOR BIDDING, TERMS, ELIGIBLE LESSEES, AND ROYALTIES ON SUCH LEASES; AMENDING SECTIONS 81-501, 81-502, 81-503, AND 81-510, R.C.M. 1947; AND REPEALING SECTION 81-504, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-501, R.C.M. 1947, is amended to read as follows:

"**81-501. Coal mining leases.** (1) The state board of land commissioners may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated, and subject to such rules and regulations as the board prescribes. *Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to, public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value. The authority to lease* extends to state lands no matter how acquired, and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued; in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee. *Every coal lease shall be conditioned upon compliance with chapters 10 and 16, Title 50, R.C.M. 1947.*

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal, and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease, after a hearing before the board."

Section 2. Section 81-502, R.C.M. 1947, is amended to read as follows:

"**81-502. Maximum term of lease — form.** *Coal* mining *leases shall* be issued for *a primary term of ten (10)* years, *and so long thereafter as coal is produced from such lands in commercial quantities. The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of ten (10) years and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under section 50-1039,*

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R.C.M. 1947, or in a mine site location permit under section 50-1607, R.C.M. 1947, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit. For the purpose of this chapter, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market. The board shall prescribe the form of the lease."

Section 3. Section 81-503, R.C.M. 1947, is amended to read as follows:

"**81-503. Royalty.** The compensation of the state under all coal mining leases shall be upon a *rental and* royalty basis and shall be fixed and determined by the board. *The rental shall be on a per acre basis but in no case shall it be less than two dollars ($2) per acre.* The amount of such royalty shall be based upon the kind, grade and character of the coal in each particular mine, upon the size, shape and nature of the coal vein, strata or body, and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor effecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than *ten percent (10%) of the f.o.b. mine price of a ton prepared for shipment.*"

Section 4. Section 81-504 is repealed.

Section 5. Section 81-510, R.C.M. 1947, is amended to read as follows:

"**81-510. Disposition of royalties and other receipts.** *All fees, rentals, royalties and bonuses collected under state coal leases shall be paid to the department of state lands and credited as follows: All fees shall be credited to the state general fund, all rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties shall be credited to the permanent fund arising from the grants the land under lease belongs.*"

Section 6. There is a new R.C.M. section numbered 81-511 that reads as follows:

81-511. Limitations on leasing. The state board of land commissioners shall not issue leases:

(1) to any corporation the majority stock of which is controlled by interests foreign to the United States, except for those interests within countries whose borders are contiguous to the United States and any corporation, individual, or person who contracts the sale of coal from such leased lands to any individual, corporation or person foreign to the United States, except those countries contiguous to the United States shall have the lease terminated; or

(2) if after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

Section 7. **Grandfather clause.** Nothing in this act may be construed to impair the obligation of any contract entered into by the board before the effective date of this act.

Approved April 9, 1975.

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CHAPTER NO. 359

AN ACT TO AMEND SECTION 11-1024, R.C.M. 1947, RELATING TO PUBLIC EMPLOYER'S CONTRIBUTION TO INSURANCE FOR PUBLIC EMPLOYEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1024, R.C.M. 1947, is amended to read as follows:

"**11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees — authority — approval of employees — limit on contributions.** All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds (⅔) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies shall pay for such insurance ten dollars ($10) per month for each officer and employee, and provided for employees of educational institutions whose employment contracts show at a minimum a full-time academic year of employment such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars ($120) per year. *However*, for employees of elementary and high school districts *and of local government units, the employer's* premium contributions *may exceed but shall not be less than the amount specified in* this section."

Section 2. **Funding.** In compliance with section 43-517, the administration of this act is declared a public purpose of a county, city, or town which may be in addition to any other levy and may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the county, city, or town.

Approved April 10, 1975.

CHAPTER NO. 360

AN ACT TO AMEND SECTION 84-603, R.C.M. 1947, TO PROVIDE THAT AN APPLICATION FOR PROPERTY VALUE REDUCTION BE FILED THE THIRD MONDAY OF JULY RATHER THAN THE FIRST DAY OF AUGUST.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 84-603, R.C.M. 1947, is amended to read as follows:

"**84-603. Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the county tax appeal board on or before the *third Monday of July,* a written application therefor. Said application shall state the post-office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The department of revenue shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section."

Approved April 10, 1975.

CHAPTER NO. 361

AN ACT AMENDING SECTION 82-4311, R.C.M. 1947, TO ADD A FILING FEE TO BE PAID TO THE SECRETARY OF STATE WHEN FILING TORT CLAIMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4311, R.C.M. 1947, is amended to read as follows:

"**82-4311. Filing of claims against state — time of filing.** All claims against the state arising under the provisions of this act shall be presented to and filed with the secretary of state within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later. *A fee of ten dollars ($10) shall be paid to the secretary of state at the time the claim is presented for filing."*

Approved April 10. 1975.

CHAPTER NO. 362

AN ACT TO AMEND SECTION 93-4102, R.C.M. 1947, TO PROVIDE FOR A SHOW CAUSE HEARING BEFORE A SHERIFF MAY SEIZE PROPERTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-4102, R.C.M. 1947, is amended to read as follows:

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"**93-4102. Affidavit and its requisites.** *(1)* When a delivery is claimed, an affidavit must be made by the *person claiming the property*, or someone in his behalf, stating:

(a) Facts which establish reasonable belief that the person claiming the property is the owner, or is lawfully entitled to possession and that the seizure is necessary to prevent the removal or destruction of the property;

(b) That the property is wrongfully detained by the defendant;

(c) That the same has not been taken for a tax, assessment, or fine, pursuant to statute; or seized, under an execution or an attachment against the property of the *person claiming the property*; or, if so seized, that it is by statute exempt from seizure; and,

(d) Particularly describing the property and the actual value of the property.

(2) The sheriff shall make no seizure unless an order from a judge of the court having jurisdiction of the cause is attached to the affidavit. The judge may sign such an order if he is satisfied:

(a) That the party seeking possession of the property has made a prima facie showing of his right to possession and the necessity for seizure at a show cause hearing before him with at least three days' notice to the person in possession of the property, if such person cannot be found for personal service, notice posted on the property and in three (3) public places in the county where the property is located is sufficient service for this purpose; or

(b) That the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking possession."

Approved April 10, 1975.

CHAPTER NO. 363

AN ACT TO AMEND SECTIONS 91A-2-102 AND 91A-2-103, R.C.M. 1947, RELATING TO SUCCESSION TO AND DISTRIBUTION OF ESTATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-2-102, R.C.M. 1947, is amended to read as follows:

"**91A-2-102. Share of spouse.** The intestate share of the surviving spouse is:

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(1) if there is no surviving issue *or if there are surviving issue all of whom are issue of the surviving spouse also,* the entire *remaining* estate;

(2) if there are surviving issue *one (1) or more* of whom are *not* issue of the surviving spouse, *as follows:*

(a) if there is surviving only one (1) such child, or the issue of one (1) such child, one-half (½) of the intestate estate;

(b) if there are surviving *more than* one (1) *such child, or one (1) such child and the issue of one (1) or more deceased children, one-third (⅓)* of the intestate estate."

Section 2. Section 91A-2-103, R.C.M. 1947, is amended to read as follows:

"**91A-2-103. Share of heirs other than surviving spouse.** The part of the intestate estate not passing to the surviving spouse under section 91A-2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there are surviving several children, or one (1) child, and the issue of one (1) or more children, and any such surviving child dies under age, and not having been married, all the estate that came to such deceased child by inheritance from the decedent, in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by representation; and if, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, to the issue of all other children of the same parent; and if all the issue are in the same degree of kinship to such child, they take equally, but if of unequal degree then those of more remote degree take by representation;

(3) if there is no surviving issue, to his parent or parents equally;

(4) if there is no surviving issue or parent, to the brothers and sisters and the *children or grandchildren of any* deceased brother or sister, by representation;

(5) if there is no surviving issue, parent, *brother, sister, or children or grandchildren of a deceased brother or sister,* to the next of kin, in equal degree, except that where there are two (2) or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote."

Approved April 10, 1975.

CHAPTER NO. 364

AN ACT TO AUTHORIZE THE DEPARTMENT OF SOCIAL AND

REHABILITATION SERVICES TO LICENSE AND SUPERVISE ADULT FOSTER FAMILY CARE HOMES FOR THREE OR FEWER AGED PERSONS OR DISABLED ADULTS; AMENDING SECTION 11-2702.1, R.C.M. 1947, TO ADD SUCH HOMES TO THE DEFINITION OF A COMMUNITY RESIDENTIAL FACILITY; AND PROVIDE A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-2303 that reads as follows:

71-2303. Short title. This act may be cited as the "Adult Foster Family Care Act".

Section 2. There is a new R.C.M. section numbered 71-2304 that reads as follows:

71-2304. Definitions. As used in this act:

(1) "Department" means the department of social and rehabilitation services.

(2) "Adult foster family care homes" means private homes owned by one or more persons over the age of eighteen (18) which offer light personal care or custodial care to aged persons or disabled adults who are not related to the owner by blood or marriage.

(3) "Aged person" means a person defined by the department as aged.

(4) "Disabled adult" means a person over the age of eighteen (18) defined by the department as disabled.

(5) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration but not administration of prescriptive medications.

(6) "Custodial care" means providing a sheltered family type setting for an aged person or disabled adult so as to provide for their basic needs of food, shelter and having a specific person available to help them meet their basic needs.

(7) "Skilled nursing care" means twenty-four (24) hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician.

Section 3. There is a new R.C.M. section numbered 71-2305 that reads as follows:

71-2305. Purpose. In order to ensure the proper care of aged persons or disabled adults in foster family care homes and to implement provisions of federal law in Title XX, Social Service Amendments of 1974, the department may obtain, license, and supervise adult foster family care homes for three (3) or fewer aged persons or disabled adults in need of such care.

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Section 4. There is a new R.C.M. section numbered 71-2306 that reads as follows:

71-2306. Standards. The department may establish standards by which private residences may be licensed as adult foster family care homes. These standards shall provide for the safety and comfort of the residents, and shall be subject to the advice and recommendations of the department of health and environmental sciences, in relation to fire and safety requirements.

Section 5. There is a new R.C.M. section numbered 71-2307 that reads as follows:

71-2307. Limitation on care offered. The type of care offered by adult foster family care homes for the purposes of this act is light personal care or custodial care and does not include skilled nursing care.

Section 6. Section 11-2702.1, R.C.M. 1947, is amended to read as follows:

"**11-2702.1. Community residential facility — defined.** "Community residential facility" means (1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care, or (2) a district youth guidance home established pursuant to section 10-1103, or (3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons, *or (4) a licensed adult foster family care home.*"

Section 7. **Effective date.** This act is effective October 1, 1975.

Approved April 10, 1975.

CHAPTER NO. 365

AN ACT TO PERMIT COUNTIES TO ESTABLISH A DEPLETION ALLOWANCE RESERVE FUND FOR COUNTY-OPERATED HOSPITALS AND NURSING HOMES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 16-1042 that reads as follows:

16-1042. Depletion allowance reserve fund authorized. The governing body of any county in Montana may establish a depletion allowance reserve fund for the replacement and acquisition of property and equipment for county-operated hospitals and nursing homes created under sections 16-1008A, 16-1037, and 16-1040.

Section 2. There is a new R.C.M. section numbered 16-1043 that reads as follows:

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16-1043. Moneys for depletion allowance reserve fund. (1) Moneys for the depletion allowance reserve fund may be derived from:

(a) public and private grants;

(b) moneys collected by the hospital or nursing home for which the fund is created, from or for indigent patients, that are in excess of the expenses incurred for the care of such patients;

(c) before a grant-in-aid for any fiscal year may be made to a county under this provision of section 71-311, R.C.M. 1947, any moneys credited during that fiscal year to the depletion allowance reserve fund from the sources provided by section 16-1043 (1) (b) of this act shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(2) The depletion allowance reserve fund may accumulate at the discretion of the governing body.

Section 3. There is a new R.C.M. section numbered 16-1044 that reads as follows:

16-1044. Investment of depletion allowance reserve fund. The moneys held in the depletion allowance reserve fund may be invested as provided by law. All interest earned on the investments is credited to the depletion allowance reserve fund.

Approved April 10, 1975.

CHAPTER NO. 366

AN ACT TO GENERALLY REVISE AND UPDATE LAWS RELATING TO PROFESSIONAL ENGINEERS AND LAND SURVEYORS; AMENDING SECTIONS 66-2335, 66-2341, AND 82A-1602.11, R.C.M. 1947; RENUMBERING SECTIONS 66-2324, 66-2329, 66-2331, 66-2332, 66-2333, 66-2334, 66-2335, 66-2337, 66-2340, 66-2341, 66-2344, AND 66-2346, R.C.M. 1947; AND REPEALING SECTIONS 66-2326, 66-2336, 66-2338, 66-2339, 66-2342, 66-2343, 66-2345, AND 66-2347, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1602.11, R.C.M. 1947, is amended to read as follows:

"82A-1602.11. Board of professional engineers and land surveyors — appointment — qualifications — removal — term. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of seven (7) members appointed by the governor. The members are:

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(a) Five (5) professional engineers who have been engaged in the practice of engineering for at least twelve (12) years, and who have been in responsible charge of *engineering teaching or* important engineering work for at least five (5) years, *and registered in Montana* for at least five (5) years. No more than two (2) of these members may be from the same branch of engineering.

(b) Two (2) registered and practicing land surveyors *who have been engaged in the practice of land surveying for at least twelve (12) years, and who have been in responsible charge of land surveying or important land surveying work for at least five (5) years, and registered in Montana for at least five (5) years.*

(3) Each member shall be a citizen of the United States, and a resident of this state. A member, *after serving* two (2) consecutive terms *shall not be reappointed for a period of two (2) years.*

(4) Each member shall serve for a term of five (5) years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause."

Section 2. There is a new R.C.M. section numbered 66-2350 that reads as follows:

66-2350. Definitions. As used in this act:

(1) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences, and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been duly registered and licensed as a professional engineer by the board.

(2) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character, and has passed an examination in the fundamental engineering subjects, as provided in this act.

(3) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

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A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this act, who practices any branch of the profession of engineering, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title, implies that he is a professional engineer, or that he is registered under this act, or who holds himself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric power lines or pipelines.

(4) "Land surveyor" means a person who (a) has been duly registered and licensed as a land surveyor by the board and (b) is a professional specialist in the technique of measuring land, educated in the basic principles of mathematics, related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisite to the surveying of real property and engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this act.

(6) "Practice of land surveying" means any service or work, the adequate performance of which requires the application of knowledge of the principles of mathematics, physical sciences, applied sciences and

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, and elevations;

(d) location of natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(7) "Board" means the board of professional engineers and land surveyors.

(8) "Department" means the department of professional and occupational licensing.

(9) "Responsible charge" means direct control and personal supervision, either of engineering work or of land surveying, as the case may be. Only professional engineers or land surveyors may legally assume responsible charge under this act.

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Section 3. Section 66-2324 is renumbered 66-2349, section 66-2329 is renumbered 66-2351, section 66-2331 is renumbered 66-2352, section 66-2332 is renumbered 66-2353, section 66-2333 is renumbered 66-2354, and section 66-2334 is renumbered 66-2355.

Section 4. Section 66-2335, R.C.M. 1947, is renumbered 66-2356, and is amended to read as follows:

"**66-2356. Roster.** A roster showing the names and *addresses* of registered professional engineers and registered land surveyors shall be published by the department during the month of April each year. Copies of this roster shall be mailed to each person registered, placed on file with the secretary of state, the clerk of each incorporated city and town and in the office of each county clerk and recorder within the state, and furnished to the public on request."

Section 5. There is a new R.C.M. section numbered 66-2357 that reads as follows:

66-2357. Requirements for registration. The requirements for engineering and land surveying registration are:

(1) Engineering. To be eligible for admission to examination for professional engineer or engineer-in-training, an applicant must be of good character and reputation and submit five (5) references with his application for registration as a professional engineer, three (3) references shall be professional engineers with personal knowledge of his engineering experience, or in the case of an application for certification as an engineer-in-training, by three (3) character references.

The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, or for certification as an engineer-in-training respectively.

(a) As a professional engineer:

(i) Registration by endorsement. A person holding a certificate of registration to engage in the practice of engineering, issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provision of the act and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may, upon application, be registered without further examination.

A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of engineering examiners, whose qualifications meet the requirements of this act, may upon application, be registered without further examination.

(ii) Engineering — graduation — experience — examination. A graduate of an engineering curriculum of four (4) years or more approved by the board as being of satisfactory standing, and with a specific record of an additional four (4) years or more of progressive experience on engineering projects of a grade and character which indicates to the board that

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the applicant may be competent to practice engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he is otherwise qualified.

(iii) Engineering-related graduation — experience — examination. A graduate of an engineering or related science curriculum of four (4) years or more, other than the ones approved by the board as being of satisfactory standing and with a specific record of eight (8) years or more of progressive experience on engineering projects of a grade and character which indicates to the board that the applicant may be competent to practice engineering, may be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he is otherwise qualified.

(iv) Long established practice. A graduate of an engineering or related science curriculum of four (4) years or more, with a specific record of twenty (20) years or more of progressive experience on engineering projects of which at least ten (10) years have been in charge of important engineering projects, and of a grade and character which indicates to the board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he is otherwise qualified.

(v) Temporary qualifications. A specific record of eight (8) years or more experience in engineering work of a character satisfactory to the board, and successfully passing a written or written and oral examination designated to show that the applicant is competent to practice engineering. This requirement will automatically expire four (4) years from the effective date of this act.

(vi) Engineering teaching in a college or university offering an approved engineering curriculum of four (4) years or more, may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity.

(b) As an engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(i) Graduation and examination. A graduate of an engineering curriculum of four (4) years or more, approved by the board as being of satisfactory standing, shall be admitted to an eight-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(ii) Graduation — experience — examination. A graduate of an engineering or related science curriculum of four (4) years or more, other than

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the ones approved by the board as being satisfactory standing, and with a specific record of four (4) or more years of progressive experience on engineering projects of a grade and character, satisfactory to the board, shall be admitted to an eight-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training, if he is otherwise qualified.

(2) Land surveying. To be eligible for admission to examination for land surveyor or land surveyor-in-training, an applicant must be of good character and reputation and shall submit five (5) references with his application for registration as a land surveyor, three (3) of which references shall be registered land surveyors having personal knowledge of his land surveying experience; or in the case of an application for certification as a land surveyor-in-training, by three (3) references, one of whom shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical, and land surveying experience, exhibits of land surveying projects of which he has been in charge, recommendations by references, and a reviewing of these categories. An interview may be held at the board's discretion. Educational credit for institute courses, correspondence courses, etc., shall be determined by the board.

One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor, or for certification as a land surveyor-in-training, respectively:

(a) As a land surveyor:

(i) Graduation — experience — examination. Have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least four (4) years of combined office and field experience in land surveying with a minimum of three (3) years of experience in charge of land surveying projects under the supervision of a registered land surveyor and who has passed the examinations as required by the board.

(ii) Formal education — experience — examination. Two (2) years of formal education in an approved curriculum above high school level with at least ninety (90) quarter credit hours passed, or equivalent semester hours, or the equivalent approved by the board, and present evidence satisfactory to the board that in addition thereto, he has had at least six (6) years of combined office and field experience in land surveying with a minimum of four (4) years of experience in charge of land surveying projects under the supervision of a registered land surveyor and who has passed the examinations as required by the board.

(iii) Registration by comity or endorsement. A person holding a certificate of registration to engage in the practice of land surveying issued or comparable qualifications from a state, territory, or possession of the United States, will be given comity consideration. However, he may be asked to take such examinations as the board deems necessary to deter-

mine his qualifications, but in any event, he shall be required to pass a written examination of not less than eight-hours duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

(iv) Temporary qualifications. A specific record of six (6) years or more experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written, or written and oral examination in land surveying prescribed by the board. This requirement will automatically expire two (2) years from the effective date of this act.

(b) As a land surveyor-in-training:

(i) Graduation — experience — examination. Have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that he has had, in addition thereto, at least two (2) years of combined office and field experience in land surveying with a minimum of one (1) year in charge of land surveying projects under the supervision of a land surveyor, and who has passed the written examinations required by the board.

(ii) Formal education — experience — examination. Have at least two (2) years of formal education in an approved curriculum above high school level with at least ninety (90) quarter credit hours passed, or equivalent semester hours or the equivalent approved by the board, and present evidence satisfactory to the board that in addition thereto, he has had at least four (4) years of combined office and field experience in land surveying with a minimum of two (2) years in charge of land surveying projects under the supervision of a land surveyor, and who has passed the written examinations required by the board.

Section 6. Section 66-2337 is renumbered 66-2358.

Section 7. There is a new R.C.M. section numbered 66-2359 that reads as follows:

66-2359. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in section 66-2357 and has been approved by the board for admission to the examinations as follows:

(a) Engineering fundamentals. Consists of an eight-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate, provided he has met all other requirements for certification required by this act.

(b) Principles — practice of engineering. Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer, provided he has met the other requirements for registration required by this act.

(c) Land surveyor-in-training. Consists of two (2) four-hour exami-

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nations designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate, provided he has met all other requirements for certificates required by this act.

(d) Land surveyor. Consists of being a land surveyor-in-training and of two (2) four-hour examinations designated as parts III and IV, on the applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration as a land surveyor, provided he has met the other requirements for registration required by this act.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify.

Section 8. There is a new R.C.M. section numbered 66-2360 that reads as follows:

66-2360. Certificates of registration — seal. (1) The department shall issue to any applicant, who, in the opinion of the board, has met the requirements of this act, a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation "professional engineer", and for a land surveyor, "land surveyor". It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or land surveyor, while the said certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend, "professional engineer" and/or "land surveyor". Plans, specifications, plats, and reports prepared by a registrant shall, when issued, be certified, signed, and stamped with the said seal or facsimile thereof. It shall be unlawful for a registrant to affix or permit his seal and signature or facsimile thereof to be affixed to any plans, specifications, plats, or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this act.

(4) The department shall issue to any applicant, who, in the opinion of the board, has met the requirements of this act, an enrollment card as engineer-in-training or land surveyor-in-training, which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or land surveyor.

Section 9. Section 66-2340 is renumbered 66-2361.

Section 10. Section 66-2341, R.C.M. 1947, is renumbered 66-2362, and is amended to read as follows:

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"**66-2362. Persons presently registered as professional engineer and/or land surveyor.** No person who heretofore has been duly registered as a *professional* engineer and/or land surveyor under the laws of Montana and whose registration has not been revoked shall be required to register again under this act, and his former registration shall be fully recognized under the provisions of this act. All certificates including those for engineer-in-training heretofore issued and not revoked shall have the same force and effect as if they had been issued under the provisions of this act, and shall be subject to the same rules, terms and conditions as are the certificates provided for in this act."

Section 11. There is a new R.C.M. section numbered 66-2363 that reads as follows:

66-2363. Public works. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities, or officials or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer for engineering projects, or land surveyor for all land surveying projects, as provided for the practice of the respective professions by this act.

This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities, or officials or employees thereof shall not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, waste water disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the land surveyor for land surveying projects, or licensed architect for architectural projects, as provided for the practice of the respective professions by this act.

Section 12. Section 66-2344 is renumbered 66-2364.

Section 13. There is a new R.C.M. section numbered 66-2365 that reads as follows:

66-2365. Revocation of registration — hearings — reissuance of certificate. (1) The board may revoke, reprimand, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) Fraud or deceit in obtaining a certificate of registration.

(b) Gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor.

(c) A felony.

(d) Violation of rules for professional conduct for professional engineers and land surveyors adopted by the board.

(e) If a land surveyor, failure to comply with the Corner Recordation Act.

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(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, and subscribed and sworn to by the person making them, and filed with the department. Charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they were made.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to revoke, reprimand, suspend, or refuse to renew.

(4) If, after hearing, four (4) or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or land surveyor.

The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if four (4) or more members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board.

Section 14. Section 66-2346 is renumbered 66-2366.

Section 15. There is a new R.C.M. section numbered 66-2367 that reads as follows:

66-2367. Exemption clause. The following are exempt from coverage under this act:

(1) The practice of any other legally recognized professions or trades.

(2) The mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent.

(3) Employees and subordinates. The work of an employee or a subordinate of a person holding a certificate of registration under this act, or an employee of a person practicing lawfully under this act; provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this act or a person practicing lawfully under this act.

(4) The practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture.

(5) The practice of professional engineering or land surveying in this state by a firm, copartnership, corporation, or joint stock association or by its members, officers, or employees on its behalf, if each person personally supervising and in direct charge of all activities of the firm, copartnership, corporation, or joint-stock association which constitutes the practice, is a professional engineer or land surveyor holding a certificate of registration under this act.

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Section 16. There is a new R.C.M. section numbered 66-2368 that reads as follows:

66-2368. Issuance of temporary permits. Temporary permits are governed by the following:

(1) Professional engineer. The practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this act. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, they may be granted a written permit for a definite period of time not to exceed one (1) year to do a specific job, provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in said permit.

(2) Land surveyor. The practice of land surveying under a temporary permit by a person registered as a land surveyor in another state is not considered to be in the best interests of the public and, therefore, shall not be granted.

Section 17. There is a new R.C.M. section numbered 66-2369 that reads as follows:

66-2369. Interpretation of practice of engineering and practice of land surveying. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this act, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer or that he is registered under this act; or who holds himself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying within the meaning and intent of this act, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a land surveyor, or through the use of some other title implies that he is a land surveyor, or who represents himself as able to perform, or who does perform any land surveying service or work, or any other service designated by the practitioner which is recognized as land surveying.

Section 18. **Repealer.** Sections 66-2326, 66-2336, 66-2338, 66-2339, 66-2342, 66-2343, 66-2345, and 66-2347, R.C.M. 1947, are repealed.

Approved April 10, 1975.

CHAPTER NO. 367

AN ACT REPEALING SECTION 52-318, R.C.M. 1947, TO REMOVE

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THE STATUTE FORBIDDING THE SALE OF MORTGAGED CHATTELS WITHOUT THE CONSENT OF THE MORTGAGEE; AND AMENDING SECTION 94-6-313, R.C.M. 1947, RELATING TO PENALTIES FOR THE CRIME OF DEFRAUDING CREDITORS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-318, R.C.M. 1947, is repealed.

Section 2. Section 94-6-313, R.C.M. 1947, is amended to read as follows:

"**94-6-313. Defrauding creditors.** (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in section 87-1-201 (37) [87A-1-201 (37)] of the Uniform Commercial Code.

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property, or of the proceeds and value therefrom, may be prosecuted under section 94-6-302."

Approved April 10, 1975.

CHAPTER NO. 368

AN ACT TO AMEND SECTIONS 87-104, 87-105, 87-107, 87-108, 87-111 THROUGH 87-114, 87-116, 87-118, 87-120 THROUGH 87-124, 87-127 THROUGH 87-136, 87-138 THROUGH 87-140, 87-142, 87-145 THROUGH 87-147, 87-149, R.C.M. 1947; BY CHANGING THE WORD "COMMISSION" TO THE WORD "DIVISION"; BY ADDING DEFINITIONS; BY SUBSTITUTING THE WORDS "BOARD OF LABOR APPEALS" IN CONFORMITY WITH THE EXECUTIVE REORGANIZATION ACT OF 1971; AND REPEALING SECTIONS 87-115, 87-117, 87-119, 87-125, AND 87-126, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-104, R.C.M. 1947, is amended to read as follows:

"**87-104. Duration of benefits.** The maximum total amount of benefits payable to any eligible individual during any benefit year shall be:

(a) (1) Thirteen (13) times his weekly benefit amount if he is qualified as an insured worker as defined in section 87-103 (c), and does not qualify under subsection (2) or (3) below.

(2) Twenty (20) times his weekly benefit amount if in addition to meeting the requirements of section 87-103 (c), he has been paid wages of one hundred dollars ($100) or more for insured work in each of two (2) quarters in his base period other than the quarter in which his wages were highest.

(3) Twenty-six (26) times his weekly benefit amount if in addition to meeting the requirement of section 87-103 (c), he has been paid wages of one hundred dollars ($100) or more for insured work in each of three (3) quarters in his base period other than the quarter in which his wages were highest.

(4) Extended benefits if he is qualified as provided under the provisions of this subsection.

(a) Definitions. — As used in this section, unless the context clearly requires otherwise—

(1) "Extended benefit period" means a period which

(A) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a state "on" indicator; and

(B) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or

(ii) the thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) There is a "national 'on' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half per cent (4 ½%).

(3) There is a "national 'off' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half per cent (4 ½%).

(4) There is a "state 'on' indicator" for this state for a week if the *division* determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

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(A) equaled or exceeded one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four per cent (4%).

(5) There is a "state 'off' indicator" for this state for a week if the *division* determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) was less than one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, or

(B) was less than four per cent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing

(i) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive-week period, as determined by the *division* on the basis of his reports to the U. S. Secretary of Labor, by

(ii) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages

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that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

(B) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U.S. Secretary of Labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the U. S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. — Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the *division*, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits. — An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the *division* finds that with respect to such week:

(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly extended benefit amount. — The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total extended benefit amount. — The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) fifty per cent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year.

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(f) (1) Beginning and termination of extended benefit period. — Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the *division* shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(6) shall be made by the *division*, in accordance with regulations prescribed by the U. S. Secretary of Labor.

(3) The effective date of subsection (a)(4) of this section shall be January 1, 1972.

(b) An individual disqualified by and pursuant to section 87-106, subsections (a), (b) and (c), shall have his maximum weekly duration reduced by the number of weeks equal to the number of weeks of disqualification."

Section 2. Section 87-105, R.C.M. 1947, is amended to read as follows:

"**87-105. Benefit eligibility conditions.** An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the *division* finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the *division* may prescribe, except that the *division* may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 87-107 (a).

(c) He is able to work and is available for work and is seeking work, provided, however, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of one (1) week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits, in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year, but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto;

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(3) Unless it occurs within the benefit year of the claimant;

(4) Unless it occurs after benefits first could become payable to any individual under this act.

(e) An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment, however, the individual must have earned the lesser of three-thirteenths (3/13) of his high quarter of his second benefit year or six (6) times his weekly benefit amount of that same year.

(f) Benefits based on service in employment defined in section 87-148 (j)(6) and (7) and section 87-110 (d) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 87-148 (n)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms."

Section 3. Section 87-107, R.C.M. 1947, is amended to read as follows:

"**87-107. Claims for benefits.** (a) Filing. Claims for benefits shall be made in accordance with such regulations as the division may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the division to each employer without cost to him.

(b) Initial determination. A representative designated by the division, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeals referee *who* shall make *his decision* with respect thereto in accordance with the procedure prescribed in subsection *(e)* of this section. No determination or redetermination of an initial or additional claim shall be made under this section unless five (5) days notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(c) Finality of determination. A determination or redetermination

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shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address provided, that such period may be extended for good cause.

(d) Appeals referee. To hear and decide disputed claims, the division shall appoint such impartial appeals referee as are necessary for the proper administration of this act, consisting of salaried examiners selected in accordance with section 87-123. No person shall participate on behalf of the division in any case in which he is an interested party. The division may designate alternates to serve in the absence or disqualification of an appeals referee.

(e) Notice of decision of appeals referee and time for appeal. After a hearing an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions; this decision shall be final unless further review is initiated pursuant to subsection (g) of this section within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address, provided, that such period may be extended for good cause.

(f) Prompt payment of claims. Notwithstanding any provision in subsection (b), (c) or (g) of this section, benefits shall be paid promptly in accordance with a determination or redetermination under this section, or the decision of an appeals referee, the board of labor appeals or a reviewing court under subsection (g) of this section upon the issuance of such determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in subsection (g) of this section, as the case may be, or the pendency of any such application, filing, or petition), unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee, or by the board of labor appeals, or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board of labor appeals, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay or other writ or process suspending the payment of such benefits shall be issued by the board or any court; but if such decision is finally modified or reversed to deny benefits, no employer's account shall be charged with benefits so paid. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

(g) Appeal to board of labor appeals and judicial review. Any interested party dissatisfied with a decision of an appeals referee is entitled

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to appeal to the board of labor appeals. The division will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the division, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within thirty (30) days of the date of mailing of the board's decision to his last known address."

Section 4. Section 87-108, R.C.M. 1947, is amended to read as follows:

"**87-108. Procedure and appeals.** (a) Procedure. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the *division* for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. The *division* shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel and amend all orders, findings and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsection (d) of this section.

(b) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the *division*. Such fees shall be deemed a part of the expense of administering this act.

(c) Appeal to courts. Any decision of the *board of labor appeals* in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the *board of labor appeals* as provided by this act. The *division or board of labor appeals* shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the *division or board of labor appeals* and has been designated by it for that purpose, or at the *division's or board of labor appeals'* request, by the attorney general.

(d) Court review. Within ten days after the decision of the *board of labor appeals* has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides against the *board of labor appeals* for the review of its decision, in which action any other party to the proceeding before the *board of labor appeals* shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the *board of labor appeals or its designate for service of process* and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as

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there are defendants and the *board of labor appeals* shall forthwith mail one such copy to each such defendant. With its answer, the *board of labor appeals* shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The *board of labor appeals* may also in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the *board of labor appeals* as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the *division or board of labor appeals* and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the *division* shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the *division or board of labor appeals* shall so order."

Section 5. Section 87-111, R.C.M. 1947, is amended to read as follows:

"**87-111. Unemployment compensation account — establishment and control.** There is hereby established separate and apart from all public moneys or funds of this state, an account in the agency fund known as the unemployment compensation account, which shall be administered by the *division* exclusively for the purposes of this act. Any reference to the unemployment compensation fund in this code shall be taken to mean the unemployment compensation account in the agency fund. This account shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109 (c)(4), and payments made in lieu of contributions as provided in section 87-109 (b)(2) and (4); (2) interest earned upon any moneys in the account; (3) any property or securities acquired through the use of moneys belonging to the account; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended. All moneys in the account shall be mingled and undivided."

Section 6. Section 87-112, R.C.M. 1947, is amended to read as follows:

"**87-112. Accounts and deposits.** The state treasurer shall be ex officio the treasurer and custodian of the unemployment compensation account and shall administer such account in accordance with the directions of the *division* and shall issue his warrants upon it in accordance with such regulations as the *division* shall prescribe. He shall maintain within the account three (3) separate accounts; (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the unemployment compensation account, upon receipt thereof by the *division*, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pur-

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suant to sections 87-135 to 87-139 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the *division*. After clearance thereof, all other money in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned for the payment of benefits from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the *division*, in any bank or public depository in which general funds of the state may be deposited but no public deposit insurance charge or premium shall be paid out of the unemployment compensation account. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment compensation account in an amount fixed by the *division* and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the unemployment compensation administration account."

Section 7. Section 87-113, R.C.M. 1947, is amended to read as follows:

"**87-113. Withdrawals.** (a) Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the *division*, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, may also be withdrawn for the payment of expenses for the administration of this act and of public employment offices, as provided by this act. The *division* shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the *division*, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in section 87-112.

(b) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the

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administration of this act pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be expended to a period ending not more than two (2) years after the date of the enactment of the appropriation law, and (C) limits the amount which may be used during any twelve (12) month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (1) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same twelve (12) month period and the four (4) preceding twelve (12) month periods, exceeds (2) the aggregate of the amounts used pursuant to this subsection and charged against the amounts credited to the account of this state during any of such five (5) twelve (12) month periods. For the purposes of this subsection, amounts used during any such twelve (12) month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount used for administration during any such twelve (12) month period may be charged against any amount credited during such a twelve (12) month period earlier than the fourth preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this subsection shall be deposited in the unemployment compensation administration fund, but until expended, shall remain a part of the unemployment compensation fund. The *division* shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(c) All warrants issued by the treasurer for payment pursuant to this section shall bear the signature of the treasurer and the countersignature of a member of the *division* or its duly authorized agent for that purpose."

Section 8. Section 87-114, R.C.M. 1947, is amended to read as follows:

"**87-114. Disbursement of funds if federal act becomes inoperative.** If title III or IX of the Federal Social Security Act is declared unconstitutional or in any way is inoperative, this act automatically becomes inoperative under the provisions of this act, and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment compensation fund and funds there held shall be immediately distributed, upon order of the *division*, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of one (1) year it shall be paid to the general fund of the state of Montana."

Section 9. Section 87-116, R.C.M. 1947, is amended to read as follows:

"**87-116. Agreements with railroad retirement board.** The unemployment compensation *division* of Montana is hereby authorized to co-

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operate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance and use of Montana state employment service facilities, and to make available to the said railroad retirement board the records of the *division* relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094); that any moneys received by the unemployment compensation *division* of Montana from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance and use of Montana state employment service facilities, shall be paid into and credited the proper division of the unemployment compensation administration fund set up and established under sections 87-133 and 87-134."

Section 10. Section 87-118, R.C.M. 1947, is amended to read as follows:

"**87-118. Divisions.** The *division* shall establish two co-ordinate *bureaus*: The Montana state employment service *bureau* created pursuant to section 87-132, and the unemployment insurance *bureau*. Each *bureau* shall be responsible to the *administrator* for the discharge of its distinctive function. Each *bureau* shall be a separate administrative unit with respect to personnel, budget, and duties except in so far as the *division* may find that such separation is impracticable."

Section 11. Section 87-120, R.C.M. 1947, is amended to read as follows:

"**87-120. Administration — duties and powers of division.** It shall be the duty of the *division* to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the *division* shall prescribe. The *division* shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The *division* shall report as provided in section 2 [82-4002] of this act. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the *division* in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the *division* believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto."

Section 12. Section 87-121, R.C.M. 1947, is amended to read as follows:

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"87-121. **Regulations and general and special rules.** General and special rules may be adopted, amended, or rescinded by the *division* only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the secretary of the state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the *division* and shall become effective in the manner and at the time prescribed by *law.*"

Section 13. Section 87-122, R.C.M. 1947, is amended to read as follows:

"87-122. **Publication.** The *division* shall cause to be printed for distribution to the public the text of this act, the *division's* regulations and general and special rules, annual reports to the governor, and any other material the *division* deems relevant and suitable and shall furnish the same to any person upon application therefor."

Section 14. Section 87-123, R.C.M. 1947, is amended to read as follows:

"87-123. **Personnel.** Subject to other provisions of this act, the *division* is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The *division* may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder. The *division* shall classify positions under this act and shall establish salary schedules and minimum personnel standards for the positions so classified. The *division* shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this act. The *division* shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause."

Section 15. Section 87-124, R.C.M. 1947, is amended to read as follows:

"87-124. **Records and reports.** Each employing unit shall keep true and accurate work records, containing such information as the *division* may prescribe. Those records shall be open to inspection and shall be subject to being copied by the *division* or its authorized representative at any reasonable time and as often as may be necessary. The *division* and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by

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it which the *division* considers necessary to the effective administration of this act. Information thus obtained or obtained from any individual under this act shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection except to public employees in the performance of their public duties in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the *board of labor appeals* or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim. Any employee or member of the *division* who violates any provision of this section shall be fined not less than twenty dollars ($20) nor more than two hundred dollars ($200), or imprisoned for not longer than ninety (90) days, or both."

Section 16. Section 87-127, R.C.M. 1947, is amended to read as follows:

"**87-127. Protection against self incrimination.** No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the *division or board of labor appeals*, the chairman of an appeal tribunal or any duly authorized representative of *either* of them or in obedience to the subpoena of the *division or board of labor appeals* or any member thereof or any duly authorized representative of the *division* in any cause or proceeding before the *division or board of labor appeals*, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying."

Section 17. Section 87-128, R.C.M. 1947, is amended to read as follows:

"**87-128. State-federal co-operation.** In the administration of this act, the *division* shall co-operate to the fullest extent consistent with the provisions of this act with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended; shall make such reports, in such form and containing such information as the secretary of labor may from time to time require, and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the secretary of labor governing the expenditures or [of] such sums as may be allotted and paid to this state under title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this act. The *division* shall co-operate with the secretary of labor in the administration of any act of Congress establishing unemployment compensation benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States, and shall do so in such manner as may be deemed advisable and expedient in order to carry out the purpose of this act. The *division*

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is hereby authorized and empowered to perform any and all acts, including the execution of agreements and contracts which may be required under and pursuant to any act passed by the Congress of the United States, authorizing the extension of unemployment compensation benefits by federal law if the *division* in its discretion deems it advisable to perform such acts.

Upon request therefor the *division* shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act."

Section 18. Section 87-129, R.C.M. 1947, is amended to read as follows:

"**87-129. Reciprocal benefit arrangements.** The *division* is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the *division* finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund.

The *division* shall participate in any arrangements, approved by the U. S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for benefit purposes;

Provided that in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws that the base period of a single state law will be used; and

Provided that such combining of wages will not involve the duplicate use of such wage credits; and

Provided that such other state agency or agency of the federal government has agreed to reimburse the unemployment compensation fund for such portion of benefits paid under this act upon the basis of such wages or services as the *division* finds will be fair and reasonable as to all affected interests; and whereby the *division* will reimburse other state or federal agencies charged with the administration of unemployment compensation laws, with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the

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basis of employment or wages for employment by employers, as the *division* finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this act. The *division* is hereby authorized to make to other state or federal agencies, reimbursements from or to the unemployment compensation fund, in accordance with arrangements made pursuant to this section."

Section 19. Section 87-130, R.C.M. 1947, is amended to read as follows:

"**87-130. Acquisition of property, etc.** Subject to the approval of the state board of examiners, the *division* may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana. Subject to the approval of the state board of examiners, the *division* may sell any equipment, supplies or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment compensation administration fund. In the event the duties, or any part thereof, of the *division* shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the *division*, with the approval of the state board of examiners, may lease such equipment and real property to the federal government, or such agency, but the title thereto shall remain in the state of Montana."

Section 20. Section 87-131, R.C.M. 1947, is amended to read as follows:

"**87-131. Division to co-operate with other agencies.** The *division* shall afford reasonable co-operation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment. The *division* may make, and may co-operate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs; and the relative desirability of state (rather than national) action in any such field. The *division* shall fully co-operate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state unemployment compensation and employment security programs, or any part of the social security program."

Section 21. Section 87-132, R.C.M. 1947, is amended to read as follows:

"**87-132. State employment service.** The *division* shall create a *bureau* to be known as the Montana state employment service which *bureau* shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this act, and for the purpose of performing such duties as are within the purview of the act of Congress entitled; "An act to provide for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other pur-

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poses," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended. The said *bureau* shall be administered by a full-time salaried director. The *division* shall be charged with the duty to co-operate with any official or agency of the United States having power or duties under the provisions of the said act of Congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of Congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The *employment security division* is hereby designated and constituted the agency of this state for the purpose of said act. The *division* is directed to appoint the personnel of the Montana state employment service. For the purpose of establishing and maintaining free public employment offices, the *division* is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization, and as a part of any such agreement the *division* may accept moneys, services, or quarters as a contribution to the employment service account."

Section 22. Section 87-133, R.C.M. 1947, is amended to read as follows:

"87-133. Unemployment compensation administration account. There is hereby created an account in the federal and private revenue fund to be known as the unemployment compensation administration account. All moneys which are deposited, appropriated or paid into this account are hereby appropriated and made available to the *division*. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this act and costs of administration of such other legislation as shall be specifically delegated to the *division* for administration by the legislature. All moneys received and deposited in said account for administration expense from the United States of America or any agency thereof, pursuant to section 302, title III of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this act. The account shall consist of (1) all moneys received from the United States of America or any agency thereof, pursuant to section 302, title III of the Social Security Act, as amended, and (2) all moneys appropriated by the state from the general fund for the purpose of administering this act, all interest and penalties collected on past due contributions as provided by section 87-135; all moneys, trust funds, supplies, facilities or services furnished, deposited, paid and received from the United States of America, or any agency thereof, from this state or any agency thereof, from any other state or any of its agencies, from political subdivisions of the state, or any other source for administrative expense and purpose. Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to section 87-113 shall remain part of the unemployment compensation account and shall be used only in accordance with the conditions specified in section 87-113. All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance

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in this account shall not lapse at any time, but shall be continuously available to the *division* for the expenditure consistent with this act. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration account in an amount to be fixed by the *division* and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment compensation account under section 87-112, shall be paid from the moneys in the unemployment compensation administration account. Any reference to the unemployment compensation administration fund in this code shall be taken to mean the unemployment compensation administration account in the federal and private revenue fund."

Section 23. Section 87-134, R.C.M. 1947, is amended to read as follows:

"**87-134. Reimbursement of fund.** This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of any of the moneys received after July 1, 1941, from the United States of America, or any agency thereof, under title III of the Social Security Act, any unencumbered balances in the unemployment compensation administration fund as of that date, any moneys thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any moneys made available by the state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of this act. Such moneys shall be promptly supplied by moneys furnished by the state of Montana or any of its subdivisions for the use of the unemployment compensation *division* and used only for purposes approved by the secretary of labor. The *division* shall, if necessary, promptly report to the governor and the governor to the legislature, the amount required for such replacement. This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act."

Section 24. Section 87-135, R.C.M. 1947, is amended to read as follows:

"**87-135. Penalty and interest on past-due contributions.** Contributions unpaid on the date on which they are due and payable, as prescribed by the *division*, shall be subject to a penalty assessment of five per centum (5%) or five ($5.00) dollars, whichever is greater, and shall bear interest at the rate of one-half of one per centum (½ of 1%) per month from and after such date until payment plus accrued interest and penalty is received by the *division*. No interest shall be charged for fractional part of a month. Interest and penalty collected pursuant to this subsection shall be paid into the unemployment compensation administration fund. When failure to pay contributions in time and before delinquency was not caused by willful intent of the employer, and for good cause shown, the *division*

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may abate the penalty and interest, as a compromise offer of settlement and payment of the tax liability."

Section 25. Section 87-136, R.C.M. 1947, is amended to read as follows:

"**87-136. Collection — reciprocity with other states in effecting collection of unpaid unemployment compensation taxes.** (a) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the *division, Montana department of labor and industry,* and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state. Action for the collection of contributions due shall be brought within five (5) years after the due date of such contributions, otherwise to be barred as provided in section 93-2604.

(b) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The *division, Montana department of labor and industry,* is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties if any, due such state; in any such case the *administrator* may through his attorney or attorneys institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this act. A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority."

Section 26. Section 87-138, R.C.M. 1947, is amended to read as follows:

"**87-138. Refunds.** If not later than three (3) years after the date on which any contributions or interest thereon became due, or not later than one (1) year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made and the *division* shall determine that such contributions or interest or any portion thereof was erroneously collected, the *division* shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the *division* shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the *division's* own

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initiative. If the *division* shall determine that an employer has paid contributions to this state under this act, when such contributions should have been paid to another state, under a similar act of such other state, transfer of such contributions to such other state shall be made upon discovery, or upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time. In the event that this act is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event, refunds shall be made of all contributions required under this act from employers for that year."

Section 27. Section 87-139, R.C.M. 1947, is amended to read as follows:

"**87-139. Lien for payment.** If any contributions payable by an employer under this act, or any portion thereof, is not paid within twenty-five (25) days after the same becomes due, the *division* may issue a certificate under its official seal, setting forth the amount of contributions due and interest accrued, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the employer owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and costs of executing the same and to return such certificates to the *division* and pay to the *division* the money collected by virtue thereof by a time to be therein specified, not more than ninety (90) days from the date of the certificate. The said sheriff shall, within five (5) days after the receipt of the certificate, file with the clerk of the district court of his county a copy thereof and thereupon the said clerk of the district court shall enter in the judgment docket, in the column for judgment debtors, the name of the employer mentioned in the certificate, and in the appropriate columns the amount of contributions due and the penalties for which the certificate is issued and the date when such copy is filed and thereupon the amount of such certificate so docketed shall become a lien upon the title to and interest in real property or chattels real of the employer against whom it is filed in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the certificate, to be collected in the same manner."

Section 28. Section 87-140, R.C.M. 1947, is amended to read as follows:

"**87-140. Summary or jeopardy assessment.** If any employer fails to file a report or return as required under this act, or the regulations of the *division* adopted thereunder, within the time specified, the *division* may make a summary or jeopardy assessment, of the amount due by making up such report and determining the amount of contributions due and owing to the fund upon the basis of such information as the *division* may be able to obtain, and thereupon the same shall be collected the same as other reports and contributions due, with penalty and interest as provided in this act. Upon making such summary or jeopardy assessment,

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the *division* shall immediately notify the employer in writing by personal service or by registered mail in the usual course, at the last known principal place of business operated by the said employer. Such assessment shall be final unless the employer shall protest such assessment in writing within fifteen (15) days after service of the notice, or within the same period of time the said employer shall file a correct, signed and sworn report and statement as provided by the act and the regulations of the *division.* Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the *division* and notice thereof mailed to the employer. At such hearing, the facts ascertained by the *division* shall be conclusive and the *division* may upon the basis of such facts ascertained assess the amount due, modify, set aside or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this act. A copy of the decision of the *division* and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final."

Section 29. Section 87-142, R.C.M. 1947, is amended to read as follows:

"**87-142. Limitation of fees.** No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the *division* or its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the *division* or its representatives, *the board of labor appeals,* or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the *division or board of labor appeals.* Any person who violates any provision of this section shall, for each such offense, be fined not more than five hundred ($500.00) dollars, or imprisoned for not more than six (6) months, or both."

Section 30. Section 87-145, R.C.M. 1947, is amended to read as follows:

"**87-145. Penalties — falsity or willful nondisclosure — violations by employer or agent — violation of act or regulations — wrongfully collecting benefits.** (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, or under an employment security law of any other state, or territory or the federal government either for himself or for any other person, shall:

(1) Be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense, and

(2) Be disqualified for benefits thereafter until:

(A) He has repaid to the *division* a sum equal to the amount so received by him; provided, however, he will not be required to repay any

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amount so obtained more than five (5) years prior to the date of the *division's* determination that the claimant made such false statements, willful nondisclosure or misrepresentation, as provided in this paragraph, and

(B) A period of not less than ten (10) nor more than fifty-two (52) weeks have elapsed since the date of such determination by the *division*, the length of time of the disqualification as herein described to be determined by the *division* in accordance with the severity of each case.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or under the employment security law of any other state, or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who shall willfully violate any provision of this act or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the *division*, either be liable to have such sum deducted from any future benefits payable to him under this act or shall be liable to repay to the *division* for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this act for the collection of past due contributions. Action for collection of overpaid benefits shall be brought within five (5) years after the date of such overpayment, otherwise to be barred as provided in section 93-2604."

Section 31. Section 87-146, R.C.M. 1947, is amended to read as follows:

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"**87-146. Representation in court.** (a) In any civil action to enforce the provisions of this act the *division* and the state may be represented by any qualified attorney who is employed by the *division* and is designated by it for this purpose or at the *division's or board of labor appeals'* request, by the attorney general.

(b) All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his request and under his direction, by the prosecuting attorney of the county wherein the crime was committed."

Section 32. Section 87-147, R.C.M. 1947, is amended to read as follows:

"**87-147. Nonliability of state.** Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the *division* shall be liable for any amount in excess of such sums."

Section 33. Section 87-149, R.C.M. 1947, is amended to read as follows:

"**87-149. Definitions — continued.** (a) Total unemployment:

(1) An individual shall be deemed "totally unemployed" in any week during which he performed no services and with respect to which no wages are payable to him.

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the *division* may by regulation otherwise prescribe.

(3) As used in this subsection the term "wages" shall include only that part of remuneration for work which is in excess of twice the weekly benefit amount, and the term "service" shall include only that work in excess of twelve (12) hours in any one week.

(b) "Unemployment compensation administration fund," means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(c) "Wages," means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the *division*. Wage records kept by the *division* for the purposes of this act prior to January 1, 1941, shall be kept on the basis of wages payable, and wage records kept by the *division* for the purposes of this act after January 1, 1941, shall be kept on the basis of wages paid. Provided, however, that the term "wages" shall not include—

(1) The amount of any payment made to, or on behalf of, an employee by an employer on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical and hospitalization expenses in connection with sickness or accident disability, or

(D) Death.

(E) Services performed for a fraternal benefit society, lodge, order, service club or association having a total annual payroll of less than five hundred dollars ($500.00) in any calendar year.

(F) Remuneration paid by any county welfare office from welfare assistance funds for services performed at the direction and request of such county welfare office.

(d) "Week," means a period of seven (7) consecutive calendar days ending at midnight on Saturday.

(e) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one (1) week of total unemployment.

(f) "Gross misconduct," means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(g) The word "division" throughout the unemployment statutes refers to a unit of the Montana state department of labor and industry.

(h) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

(i) The words "board of labor appeals" used in this act mean three (3) persons appointed by the governor, who are not public employees but who are attached to the Montana state department of labor and industry. The function of said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws."

Section 34. Sections 87-115, 87-117, 87-119, 87-125, and 87-126, R.C.M. 1947, are repealed.

Approved April 10, 1975.

CHAPTER NO. 369

AN ACT AMENDING SECTION 26-215, R.C.M. 1947, TO PROHIBIT THE CASTING OF SPOTLIGHTS OF GREATER LUMINANCE THAN

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.75 CANDLEPOWER ATTACHED TO A MOTORIZED VEHICLE WHILE IN POSSESSION OF A FIREARM OR OTHER IMPLEMENT CAPABLE OF KILLING WILDLIFE OR DOMESTIC ANIMALS; AND PROVIDING A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-215, R.C.M. 1947, is amended to read as follows:

"**26-215. Exemption from general provisions.** *(1) It shall be unlawful for any person or one (1) or more of a group of persons together to throw or cast the rays of a spotlight having a luminance of greater than .75 candlepower attached to or cast from a motorized vehicle into any field, pasture, woodland, forest or prairie wherein wildlife or domestic livestock may be, or may be reasonably expected to be, while having in his possession or their possession or under control a firearm or other implement whereby any wildlife or domestic animal could be killed by aid of an artificial light; provided, however, that all officers authorized to enforce the game and livestock laws of the state of Montana and all landowners, lessees, or their agents, while on their own lands in connection with their legitimate activities, and employees of such landowners, lessees, and agents shall be exempt from the provisions of this act.*

(2) Provided the provisions of this section shall not apply where the headlights of a motor vehicle, operating and proceeding in a normal manner, on any highway or roadway cast a light upon such animal on or adjacent to the highway or roadway, and there is no intent or attempt to locate that animal.

(3) Minors under fifteen (15) years of age may fish for and take fish, during the open season without a license; provided, however, that no nonresident person, under the age of fifteen (15) years, shall fish in or on any Montana waters without first having obtained a Class B, B-2 or B-3 fishing license, unless such nonresident person under the age of fifteen (15) years shall be in the company of an adult in possession of a valid Montana fishing license, provided that the limit of fish for such nonresident person and the accompanying adult combined shall not exceed the limit for one adult as established by law or by regulation of the commission.

(4) A person convicted of violating subsection (2) of this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both."

Approved April 10, 1975.

CHAPTER NO. 370

AN ACT REQUIRING SCHOOL DISTRICTS TO CONTRACT FOR ARCHITECTURAL SERVICES UNDER CERTAIN CIRCUMSTANCES; AND ESTABLISHING THE PROCEDURES FOR AWARDING SUCH CONTRACTS.

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Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-6815 that reads as follows:

75-6815. Contracts for architectural services required under certain circumstances. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds fifty thousand dollars ($50,000) and requires architectural services, such services shall be by contract.

Section 2. There is a new R.C.M. section numbered 75-6816 that reads as follows:

75-6816. Procedures pursuant to awarding a contract for architectural services. The trustees of a school district shall adhere to the following procedure in awarding a contract for architectural services when such services are required:

(1) Interview representatives of at least three (3) certified architectural firms, provided that at least three (3) such firms apply, after advertising that interviews will be conducted for the purpose of procuring architectural services. The advertisements shall be published in a newspaper of general statewide circulation at least twice each week for three (3) consecutive weeks, or no less than two (2) times in the semimonthly publication of the Montana state department of administration that provides for the statewide announcement of projects requiring professional services. The advertisements shall include a description of the proposed work for which architectural services are needed. Following a reasonable time period after all interested firms have notified the trustees of their interest, the trustees shall give reasonable public notice of the schedule of interviews. These interviews shall be open to the public.

(2) During each interview, the trustees shall:

(a) review current statements of the qualifications and past performance records of the firm, as provided by the firm;

(b) conduct discussions with the firm regarding anticipated concepts and the relative merits of alternative methods for furnishing the required services;

(c) consider questions and testimony from the public;

(d) consider or request any other information of the firm which they, the trustees, deem relevant.

The trustees may interview all firms together or separately.

(3) Upon completion of the interviews, and after a reasonable time period, the trustees shall give reasonable public notice of their tentative selection of a firm.

(4) The trustees shall select one (1) firm from those interviewed and shall give reasonable public notice of their final selection.

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(5) The trustees shall give reasonable public notice of and hold a public meeting to consider any questions and testimony from the public regarding the architectural services to be performed.

(6) For the purposes of this act, "reasonable public notice" means a notice or advertisement published in a newspaper or newspapers that will give notice to the largest number of people in the district as determined by the trustees; and "reasonable time period" means a time between public meetings and public notices sufficient to allow the public to be cognizant of such events as determined by the trustees.

Section 3. There is a new R.C.M. section numbered 75-6817 that reads as follows:

75-6817. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

Section 4. There is a new R.C.M. section numbered 75-6818 that reads as follows:

75-6818. Tentative and final proposals — public meetings. Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two (2) of these meetings, one (1) to review the firm's preliminary plans and one (1) to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings, the trustees shall consider any questions and testimony from the public.

Section 5. There is a new R.C.M. section numbered 75-6819 that reads as follows:

75-6819. Encouraged to award contract to Montana firms. The trustees are encouraged, but not required, to award architectural contracts to firms based or operating in Montana.

Section 6. There is a new R.C.M. section numbered 75-6820 that reads as follows:

75-6820. Prohibition against contingent fees — penalty. (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

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(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsections (1), (2), or (3) of this section shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Approved April 10, 1975.

CHAPTER NO. 371

AN ACT TO PERMIT SCHOOL DISTRICTS TO CONTRACT WITH OTHER SCHOOL DISTRICTS FOR THE PURPOSE OF CONSTRUCTING JOINT VOCATIONAL-TECHNICAL SECONDARY SCHOOLS; ALLOWING SCHOOL DISTRICTS TO PROVIDE TRANSPORTATION TO SECONDARY SCHOOL IF LOCATED IN ANOTHER DISTRICT; AND AMENDING SECTION 75-7001, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-7103.1 that reads as follows:

75-7103.1. Trustees may enter into contracts and issue bonds for joint construction. The trustees of a school district may enter into a contract with the trustees of any school district within the county, or with any school district in an adjoining county, to provide for the joint construction of vocational-technical secondary schools upon such terms and conditions as may be mutually agreed upon between such districts. The trustees of any district executing a contract in accordance with this act may levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

Section 2. There is a new R.C.M. section numbered 75-7103.2 that reads as follows:

75-7103.2. Proportional joint ownership — disposition of moneys. The vocational-technical secondary school constructed under the preceding section shall be jointly owned by the school districts contributing to its construction in proportion to the contribution of each district. The sale or other disposition of a district's interest in the school shall be made in accordance with section 75-8205. Moneys received from the sale or disposition of a district's interest in a vocational-technical secondary school shall

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be credited to the debt service fund, building fund, general fund or any combination of these three funds, at the discretion of the trustees.

Section 3. Section 75-7001, R.C.M. 1947, is amended to read as follows:

"75-7001. Definitions. As used in this Title, unless the context clearly indicates otherwise:

"Transportation" shall mean:

(1) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance;

(2) a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district; or

(3) "individual transportation" whereby a district is relieved of actually conveying a pupil. Such individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

An "eligible transportee" shall mean a public school pupil who:

(1) is not less than five (5) years of age nor has attained his twenty-first (21st) birthday;

(2) is a resident of the state of Montana;

(3) regardless of district and county boundaries, resides at least three (3) miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(4) is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school."

Approved April 10, 1975.

CHAPTER NO. 372

AN ACT TO AMEND SECTION 84-301, R.C.M. 1947, TO PLACE CENTRALLY ASSESSED UTILITY ALLOCATIONS IN CLASS NINE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of

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the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than

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seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. *Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (b) for cooperatives, and all other* property not included in the eight (8) preceding classes."

Approved April 10, 1975.

CHAPTER NO. 373

AN ACT TO AMEND SECTION 93-1906, R.C.M. 1947, TO PROVIDE A MINIMUM SALARY FOR REPORTERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-1906, R.C.M. 1947, is amended to read as follows:

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"**93-1906. Salary and expenses of reporter — apportionment.** Every reporter appointed under the provisions of this chapter *is entitled to receive* an annual salary of *not less than* twelve thousand five hundred dollars ($12,500) *and not more than sixteen thousand dollars ($16,000) said salary to be set by the judge in the district in which the reporter works,* and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The reporter is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary."

Approved April 10, 1975.

CHAPTER NO. 374

AN ACT TO ADD AGRICULTURAL ENTERPRISES AND RETIREMENT HOUSING TO THE PROJECTS ELIGIBLE FOR INDUSTRIAL REVENUE BONDS; AMENDING SECTION 11-4101, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-4101, R.C.M. 1947, is amended to read as follows:

"**11-4101. Definition of terms.** As used in this act, unless the context otherwise requires:

(1) "Municipality" *means* any incorporated city or town in the state;

(2) "Project" *means* any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, *agricultural,* or industrial enterprises, recreation or tourist facilities, and *retirement housing,* hospitals, long-term care facilities or medical facilities;

(3) "Governing body" *means* the board or body in which the general legislative powers of the municipality or county are vested;

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(4) "Mortgage" *means* a mortgage or a mortgage and deed of trust, or other security device*; and*

(5) "Agricultural enterprises" means any agricultural enterprise including, but not limited to, producing, warehousing, storing, fattening, treating, handling, distributing or selling farm products or livestock."

Approved April 10, 1975.

CHAPTER NO. 375

AN ACT TO AMEND SECTION 71-308, R.C.M. 1947, AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROMULGATE RULES GOVERNING MEDICAL AID AND HOSPITALIZATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-308, R.C.M. 1947, is amended to read as follows:

"71-308. Medical aid and hospitalization. (1) Medical aid and hospitalization for nonresidents within the county and county residents unable to provide such necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as approved by the department of health and environmental sciences or the state medical association, or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association and dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by the board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The board of county commissioners shall make suitable arrangements to provide respectable burial for nonresidents within the county and county residents for whom such expenses are not otherwise available.

(4) The department of social and rehabilitation services may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". Provided, however, such definition may not allow payment by a county for general assistance-medical for persons whose income exceeds three hundred percent (300%) of the limitation for obtaining regular county general assistance.

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(5) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment."

Approved April 10, 1975.

CHAPTER NO. 376

AN ACT RELATING TO PUBLIC WELFARE; ENACTING THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN; AMENDING THE REVISED CODES OF MONTANA, 1947, TITLE 10 BY ADDING A NEW CHAPTER 14.

Be it enacted by the Legislature of the State of Montana:

Section 1. Title 10 of the Revised Codes of Montana, 1947, is hereby amended by adding thereto a new chapter to be Chapter 14, to read as follows:

Chapter 14 — Interstate Compact on the Placement of Children.

10-1401. Enactment — provisions. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this act:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

Article III. Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

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Article IV. Penalty for Illegal Placement

The sending, bringing or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

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(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

10-1402. Financial responsibility. Financial responsibility for any

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child placed pursuant to the provisions of the interstate compact on the placement of children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of sections 93-2601-41 to 93-2601-82 (Revised Uniform Reciprocal Enforcement of Support Act) and sections 10-1312 and 10-1313 also may be invoked.

10-1403. Appropriate public authorities defined. The "appropriate public authorities" as used in Article III of the interstate compact on the placement of children shall, with reference to this state, mean the state department of social and rehabilitation services and said department shall receive and act with reference to notices required by said Article III.

10-1404. Appropriate authority in the receiving state. As used in paragraph (a) of Article V of the interstate compact on the placement of children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the state department of social and rehabilitation services.

10-1405. Agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the interstate compact on the placement of children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

10-1406. Requirements for visitation, inspection and supervision. Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under sections 10-1317, 10-1318, and 71-710 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by paragraph (b) of Article V of the interstate compact on the placement of children.

10-1407. Certain laws not applicable. The provisions of section 71-711 shall not apply to placements made pursuant to the interstate compact on the placement of children.

10-1408. Court jurisdiction retained. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the interstate compact on the placement of children and shall retain jurisdiction as provided in Article V thereof.

10-1409. Executive head defined. As used in Article VII of the interstate compact on the placement of children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

Approved April 10, 1975.

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CHAPTER NO. 377

AN ACT PROVIDING A GRIEVANCE PROCEDURE BEFORE THE BOARD OF PERSONNEL APPEALS FOR EMPLOYEES OF THE DEPARTMENT OF HIGHWAYS; AND REPEALING SECTION 32-2505, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 32-2505.1 that reads as follows:

32-2505.1. Grievance procedure. (1) An employee of the department of highways, aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of highways against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

Section 2. There is a new R.C.M. section numbered 32-2505.2 that reads as follows:

32-2505.2. Board order to department. If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the department of highways requiring such action of the department as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common law rules of evidence.

Section 3. There is a new R.C.M. section numbered 32-2505.3 that reads as follows:

32-2505.3. Enforcement of board order. The board or the aggrieved employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

Section 4. This act is effective upon passage and approval.

Approved April 10, 1975.

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CHAPTER NO. 378

AN ACT PROVIDING AN APPEALS PROCEDURE BEFORE THE BOARD OF PERSONNEL APPEALS FOR STATE EMPLOYEES AFFECTED BY THE OPERATION OF TITLE 59, CHAPTER 9, R.C.M. 1947; AMENDING SECTION 82A-1014, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1014, R.C.M. 1947, is amended to read as follows:

"**82A-1014. Board of personnel appeals created.** (1) There is created a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in section 82A-108.

(3) The board consists of five (5) members appointed by the governor. Two (2) members shall represent management, two (2) members shall represent employees or employee organizations of the state, and one (1) member shall represent a neutral position.

(4) *(a)* Any employee or his representative affected by the operation of *Title 59, chapter 9, R.C.M. 1947,* is entitled to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board.

(b) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard, under the provisions of the grievance procedure prescribed by the board.

(c) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the department of administration requiring such action of the department as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common law rules of evidence.

(d) The board or the employee may petition for the enforcement of the board's order and for appropriate temporary relief, and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported

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by substantial evidence on the record considered as a whole, shall be conclusive.

(5) The board is designated a quasi-judicial board for purposes of section 82A-112."

Section 2. This act is effective upon passage and approval.

Approved April 10, 1975.

CHAPTER NO. 379

AN ACT TO INCREASE THE MINIMUM RENTALS AND TO AUTHORIZE THE BOARD OF LAND COMMISSIONERS TO ESTABLISH THE RENTAL AND ROYALTY RATES FOR OIL AND GAS LEASES ON STATE LANDS BY AMENDING SECTIONS 81-1702.1 AND 81-1704, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-1702.1, R.C.M. 1947, is amended to read as follows:

"**81-1702.1. Rentals — filing fee — contiguity.** *(1)* The annual money rentals to be paid to the state for oil and gas leases issued on and after *July 1, 1975,* shall be *set by the board but may not be less than* one dollar *and fifty cents ($1.50)* for each acre of land leased, except that in addition to the sum of one dollar *and fifty cents ($1.50)* per acre, the rental for the first year of the lease shall also include any sum in excess of one dollar *and fifty cents ($1.50)* per acre offered and accepted for the first year's rental; however, this *annual* rental shall in no case be less than *one hundred* dollars *($100)* a year.

(2) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment the lease terminates.

(3) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than one (1) square mile.

(4) In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within thirty (30) days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment."

Section 2. Section 81-1704, R.C.M. 1947, is amended to read as follows:

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"81-1704. **Royalty — time for payment — computation — minimum royalty.** In every oil and gas lease granted by the state under this chapter, and acts amendatory thereto, there shall be reserved to the state as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby, and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the state board of land commissioners at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease; provided that such royalty reservation shall be *set by the board but may not be less than* twelve and one-half per centum (12 ½%) on gas, and *not less than* twelve and one-half per centum (12 ½%) on that portion of the average production of oil or casing-head gasoline for each producing well not exceeding three thousand (3,000) barrels for the calendar month; provided, further, that the royalty on gas, including casing-head gas and all gaseous substances, while the same is not sold or used off the premises shall be at the rate of *four* hundred dollars *($400)* per well each year or the amount of the annual rental provided in said lease, in lieu of such per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease, and as long as such leased lands contain a well capable of such production and such payment is made the lease shall be considered as a producing lease under the lease terms. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

The lessee shall pay to the state, in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid, or agreed to be paid, to the lessee, for such oil or gas; or, at the option of the state, exercised in writing by the state board of land commissioners not oftener than every thirty (30) days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions, into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells."

Section 3. This act is effective April 1, 1975.

Approved April 10, 1975.

CHAPTER NO. 380

AN ACT TO RECODIFY THE EXAMINATION DUTIES OF THE DEPARTMENT OF COMMUNITY AFFAIRS; REVISING PRESENT LANGUAGE AND ADDING SECTIONS TO CLARIFY THE AUDIT PROCESS; PROVIDING FOR AUDITS BY LICENSED PUBLIC ACCOUNTANTS OR FIRMS OF PUBLIC ACCOUNTANTS; AMENDING SECTION 75-6323, R.C.M. 1947; REPEALING SECTIONS 82-4501 THROUGH 82-4514, R.C.M. 1947; AND PROVIDING A DELAYED EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-4515 that reads as follows:

82-4515. Definition. Unless the context requires otherwise, in this chapter "department" means the department of community affairs.

Section 2. There is a new R.C.M. section numbered 82-4516 that reads as follows:

82-4516. Audit duties of department. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns;

(c) school districts;

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy;

(h) fire department relief associations.

(2) Each audit shall be made annually and shall cover the immediately preceding fiscal year of the governmental entity.

(3) Each annual audit shall be initiated not later than twelve (12) months from the close of the fiscal year for which the audit is conducted.

(4) In lieu of the annual audits required by the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such annual audits with a public accountant or firm of public accountants who are licensed under the laws of Montana.

Section 3. There is a new R.C.M. section numbered 82-4517 that reads as follows:

82-4517. Audit purpose. The purpose of the audit of the affairs of the governmental entities as set forth in this chapter shall be to insure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished; that the financial condition and operations of the entities are reasonably conducted and reported; that the stewardship of such entities is conducted in such a manner as to preserve and protect the public trust and to accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public.

Section 4. There is a new R.C.M. section numbered 82-4518 that reads as follows:

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82-4518. Audit scope. Each annual audit shall be a comprehensive audit of the affairs of the governmental entity, including comment on the balance sheet, results of operations, compliance with state statutes and regulations, recommendations for improvement, and any other comments deemed pertinent by the auditor, and including his expression of opinion as to the adequacy of the financial presentations. Each such annual audit required shall be made in accordance with generally accepted governmental auditing standards.

Section 5. There is a new R.C.M. section numbered 82-4519 that reads as follows:

82-4519. Audit exit review conference. Upon completion of the field work of each audit, the in-charge auditor is required to hold with the appropriate officials an exit review conference in which the audit results shall be discussed.

Section 6. There is a new R.C.M. section numbered 82-4520 that reads as follows:

82-4520. Audit reports content. The audit reports shall contain but are not limited to the following:

(1) financial statements that conform with the generally accepted governmental accounting principles and which, insofar as possible, present the financial position and results of financial operations for each fund of the governmental entity;

(2) an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed; when an overall opinion cannot be expressed, the reasons therefor should be stated;

(3) a statement that previously noted deficiencies or recommendations contained in previous audit reports have been acted upon by adoption as recommended, adoption with modification, or rejection; and

(4) disclosure of any lack of compliance with state statutes or regulations, as well as any operating deficiencies or recommendations for improvement.

Section 7. There is a new R.C.M. section numbered 82-4521 that reads as follows:

82-4521. Audit reports — issuance and filing. (1) Within sixty (60) days after the completion of the field work, the department shall issue audit reports as follows:

(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;

(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;

(c) school district audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the clerk of the school district;

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(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;

(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;

(f) conservancy district audit reports to the board of directors, the state department of natural resources and conservation, the district court, and the county attorney(s);

(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk; and

(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s);

(2) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee or board, the officer, employee or board must be proceeded against by the attorney general or county, city or town attorney as provided by law. The county, city or town attorney shall report to the department within thirty (30) days after receiving the audit report from the department, the proceedings instituted or to be instituted relating to the violations of law and nonperformance of duty. If the county, city or town attorney fails or refuses to prosecute the case, the department may employ an attorney to prosecute the case at the expense of the respective governmental entity.

(3) All audit reports issued by the department are to be maintained on file at an appropriate location and open to public inspection.

Section 8. There is a new R.C.M. section numbered 82-4522 that reads as follows:

82-4522. Audit report — reply by governing bodies. (1) Upon receipt of the audit report the governing bodies of each audited entity shall review the contents, and within thirty (30) days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification shall not be required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

Section 9. There is a new R.C.M. section numbered 82-4523 that reads as follows:

82-4523. Audit report — publication. After the expiration of the thirty (30) day period provided for in section 82-4522, the department shall send a copy of the general comments section of each annual audit report to a newspaper of general circulation for publication. However, the general comments section of each annual county audit report shall be sent

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to the official newspaper of the county for publication. The publication shall include a statement to the effect that the audit report is on file in its entirety and open to public inspection. Publication costs shall be borne by the audited governmental entity.

Section 10. There is a new R.C.M. section numbered 82-4524 that reads as follows:

82-4524. Audit fees. The department shall charge audit fees based upon the costs incurred by the department in the conduct of each annual audit, except as follows:

(a) For each annual audit of fire department relief associations, the department shall charge audit fees on the basis of the funds of the association:

(i) if the fund is more than one thousand dollars ($1,000) and less than five thousand dollars ($5,000), the annual audit fee shall be ten dollars ($10);

(ii) if the fund is from five thousand dollars ($5,000) to ten thousand dollars ($10,000), the annual audit fee shall be twenty-five dollars ($25);

(iii) if the fund is more than ten thousand dollars ($10,000), the annual audit fee shall be thirty-five dollars ($35).

(b) For each annual audit of fire districts and volunteer fire departments, the department shall charge audit fees of seven dollars and fifty cents ($7.50) an hour for each person engaged in the audit.

(c) For each annual audit of irrigation districts, the department shall charge audit fees of seventy dollars ($70) a day for each person engaged in the audit.

(d) For each annual audit of conservancy districts, the department shall charge audit fees of seventy dollars ($70) a day for each person engaged in the audit.

All audit fees herein provided shall be paid by the governmental entity to the state treasurer and credited to the state general fund.

Section 11. There is a new R.C.M. section numbered 82-4525 that reads as follows:

82-4525. Audit by independent accountant/auditor. (1) In lieu of the annual audits required of the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such annual audits with a public accountant or firm of public accountants who are licensed under the laws of Montana.

(2) The department shall establish rules governing the administration of the contracts between the department, the independent accountant/auditor, and the governmental entities. These rules and regulations shall include, but not be limited to:

(a) establishment of criteria for the selection of the independent accountant/auditor;

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(b) contract form and content; and

(c) standards of audit and reporting.

Section 12. There is a new R.C.M. section numbered 82-4526 that reads as follows:

82-4526. Access to public accounts — actions to compel. (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law. If an officer of any county, city, town, school, or other governmental entity referred to in this act, refuses to accord the department access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers or records of his office, or, if the department finds a shortage of cash, the department shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage, with the respective county, city or town attorney and the governing body of the governmental entity.

Upon filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office, and the governing body of such governmental entity shall appoint some qualified person to the office, pending completion of the audit.

(2) Upon the completion of the audit by the department, if a shortage of cash existed in the accounts of the officer, the department shall file with the governing body of the governmental entity a final report of the audit, showing the shortage. The right of the officer to the office is then forfeited, and the office becomes vacant as of the date of the suspension of the officer. The person appointed to the office upon the suspension of the officer shall hold the office until the election and qualification of his successor, as provided by law.

(3) An officer whose right to office has been forfeited may, within ten (10) days after the filing of the department's final report or audit, begin in the district court of the proper judicial district a proceeding in quo warranto to test the right of his successor to hold the office, and to test the accuracy of the final report and audit of the department.

Section 13. There is a new R.C.M. section numbered 82-4527 that reads as follows:

82-4527. Duty of officers to aid in audit. The officers and employees of the governmental entities referred to in this act shall afford all reasonable facilities for the department's audit and shall furnish information to the department under oath in a manner prescribed by the department.

Section 14. There is a new R.C.M. section numbered 82-4528 that reads as follows:

82-4528. Power to examine books and papers. The department may examine any books, papers, accounts and documents in the office or possession of any governmental entity referred to in this act, and may send for persons or papers and examine under oath any person concerning them.

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Section 15. There is a new R.C.M. section numbered 82-4529 that reads as follows:

82-4529. Special audits. (1) In addition to the annual audits required by section 82-4516, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this act.

(2) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and credited to the state general fund.

Section 16. There is a new R.C.M. section numbered 82-4530 that reads as follows:

82-4530. Accounting methods. The department shall prescribe the general methods and details of accounting for the receipt and disbursement of all monies belonging to governmental entities referred to in this act, and shall establish in those offices general methods and details of accounting. All governmental entity officers shall conform with the standards prescribed by the department.

Section 17. Section 75-6323, R.C.M. 1947, is amended to read as follows:

"**75-6323. Extracurricular fund for pupil functions.** The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

An accounting system for the extracurricular fund recommended by the *department of community affairs* shall be implemented by the trustees. Such accounting system shall provide for:

(1) the internal control of the cash receipts and expenditures of the money; and

(2) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function."

Section 18. Sections 82-4501 through 82-4514, R.C.M. 1947, are repealed.

Section 19. This act shall become effective on July 1, 1976.

Approved April 10, 1975.

CHAPTER NO. 381

AN ACT TO AMEND SECTION 84-708.1, R.C.M. 1947, TO ALLOW THE

DEPARTMENT OF REVENUE THE DISCRETION TO ENTER INTO RECIPROCAL AGREEMENTS WITH STATES CONCERNING THE TAXING OF NON-RESIDENT INCOME.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-708.1, R.C.M. 1947, is amended to read as follows:

"**84-708.1. Powers and duties of the state department of revenue.** (1) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis, or in the case of telegraph or telephone microwave electronic equipment, which has no physical connection with the total system, but is an integral part of such system, apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as shall be just and equitable, provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the agent of the department of revenue in the county wherein they are situate.

(2) To transmit to the county clerk of each county its apportionment of all assessments made by the department.

(3) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over its agents and any officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement. Further, the state department of revenue is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers

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and assessors as often as is deemed necessary in the judgment of the department and the costs of such appraisers and assessors attending shall be borne by the state. Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary. The department shall notify all assessors and appraisers at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the state.

(5) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the department.

(9) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the department. Upon completion of such inspection and examination the department shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the department to secure the necessary information. Within sixty (60) days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment

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shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(10) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the department shall have authority to investigate and determine.

(12) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department shall have authority to investigate and determine.

(13) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(14) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the department, and to furnish the governor such assistance as he may require.

(16) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the department, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(17) In its discretion, to enter into reciprocal agreements with the taxing authorities of states contiguous to the state of Montana which tax the income of Montana residents earned in that state to provide that the tax imposed by Title 84, chapter 49, R.C.M. 1947, on income derived by persons who are nonresidents of this state shall not be payable when such other state or states agree to grant similar treatment to residents of Montana."

Approved April 10, 1975.

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CHAPTER NO. 382

AN ACT AMENDING SECTION 54-301, R.C.M. 1947, BY CHANGING THE DEFINITION OF "MARIJUANA".

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 54-301, R.C.M. 1947, is amended to read as follows:

"54-301. Definitions. As used in this act:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent), or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(4) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(5) "Dangerous drug" means a drug, substance or immediate precursor in Schedules I through V hereinafter set forth.

(6) "Counterfeit substance" means a dangerous drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number of device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

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(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) "Drug" means:

(a) substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice, or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(16) "*Marijuana (marihuana)*" means all plant *material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.*

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

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(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in clause (a), but not including the isoquinoline alkaloids, of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under section 54-302 of this act, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(23) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this act.

(24) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(25) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(26) The term "prescription" shall be given the meaning it has in section 66-1502 (13), R.C.M. 1947."

Approved April 10, 1975.

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CHAPTER NO. 383

AN ACT AMENDING SECTION 80-1503, R.C.M. 1947, TO ALLOW THE SALE OF BY-PRODUCTS FROM THE PRISON RANCH.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1503, R.C.M. 1947, is amended to read as follows:

"**80-1503. Public sale of goods prohibited — exchange for products of other states — labor contracts.** (1) Except as provided in subsection (8) of section 80-1501, *and except for hides and livestock by-products best utilized in a rendering plant,* and except for articles made by a resident of an institution for his own profit, the sale or exchange, directly or indirectly to the consuming public of goods produced or manufactured at an institution, is prohibited.

(2) The exchange of goods produced by an institution for the products of any other state is prohibited.

(3) Except where specifically permitted by the department of institutions, arranging for the labor of a resident of an institution is prohibited."

Approved April 10, 1975.

CHAPTER NO. 384

AN ACT TO AMEND SECTIONS 59-1602 AND 59-1605, R.C.M. 1947, BY ALLOWING STUDENT REPRESENTATIVES TO PARTICIPATE IN NEGOTIATIONS INVOLVING THE BOARD OF REGENTS AND PUBLIC EMPLOYEES IN CERTAIN CASES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1602, R.C.M. 1947, is amended to read as follows:

"**59-1602. Definitions.** When used in this act: (1) "public employer" means the state of Montana or any political subdivision thereof, including but not limited to, any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees, *when the board of regents is the public employer defined in this section, the student government at an institution of higher education*

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may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

(2) "public employee" means a person employed by a public employer in any capacity, except elected officials, persons directly appointed by the governor, supervisory employees and management officials (as defined in subsection (3) and (4) below) or members or any state board or commission who serve the state intermittently, professional instructors, teachers, school district clerks and school administrators, and paraprofessional instructors employed by school boards and districts of this state, registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;

(3) "supervisory employee" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(4) "management officials" means representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy;

(5) "labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment;

(6) "exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer;

(7) "board" means the board of personnel appeals provided for in section 82A-1014;

(8) "person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(9) "unfair labor practice" means any unfair labor practice listed in section 5 [59-1605];

(10) "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking

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to arrange terms or conditions of employment, regardless of whether the disputants stand the proximate relation of employer and employee;

(11) "appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board."

Section 2. Section 59-1605, R.C.M. 1947, is amended to read as follows:

"59-1605. Unfair labor practices of employer or labor organization. (1) It is an unfair labor practice for a public employer to:

(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 3 [59-1603] of this act;

(b) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under section 12 (3), an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(c) discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; however, nothing in this act or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require that an employee who is not or does not become a union member shall be required as a condition of employment to have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(d) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act;

(e) refuse to bargain collectively in good faith with an exclusive representative.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right guaranteed in subsection (1) of section 3 [59-1603] of this act, or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(b) refuse to bargain collectively in good faith with a public employer, if it has been designated as the exclusive representative of employees;

(c) use agency shop fees for contributions to political candidates or parties at state or local levels.

(3) For the purpose of this act, to bargain collectively is the performance of the mutual obligation of the public employer, or his designated representatives, and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment, or the

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negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(4) This act does not limit the authority of the legislature, any political subdivision or the governing body, relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment."

Section 3. This act is effective on its passage and approval.

Approved April 10, 1975.

CHAPTER NO. 385

AN ACT TO AMEND SECTION 71-2001 AND 71-2004, R.C.M. 1947, TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CONTRACT WITH CERTAIN CORPORATIONS TO MEET ITS RESPONSIBILITIES FOR PROVISION OF CARE TO DEVELOPMENTALLY DISABLED PERSONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-2001, R.C.M. 1947, is amended to read as follows:

"**71-2001. Purposes.** The *legislature*, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for care in existing state institutions, establishes by this act a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family-oriented residences and establishes a program to provide such homes *through local nonprofit corporations.*"

Section 2. Section 71-2004, R.C.M. 1947, is amended to read as follows:

"**71-2004. Department contracts with nonprofit corporations — governmental units providing for community homes.** (1) The department of social and rehabilitation services *may* contract with nonprofit corporations or associations to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are authorized, at their own expense, to provide funds, materials, facilities, and services for community homes for the developmentally disabled."

Approved April 10, 1975.

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CHAPTER NO. 386

AN ACT RELATING TO THE PAYMENT OF PARTIAL DISABILITY OR INDEMNITY BENEFITS; AND AMENDING SECTION 92-709, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 92-709.2 that reads as follows:

92-709.2. Disability benefits — indemnity benefits — election. (1) In addition to temporary total disability benefits allowed in this act, a worker whose injury results in partial disability is entitled to receive compensation under section 92-703.1 or indemnity benefits under section 92-709.

(2) A worker who has elected to proceed under section 92-709 may withdraw his election at any time and shall be entitled to compensation under section 92-703.1 during the remaining period of his disability, provided however, that he shall not be entitled to receive benefits under both sections during any month.

(3) A worker who has elected to proceed under section 92-703.1 may withdraw his election at any time and is entitled to receive indemnity benefits under section 92-709, provided however, that he shall not be entitled to a greater benefit including compensation paid under section 92-703.1, than he would have received if he had proceeded exclusively under section 92-709, and provided further that he shall not be entitled to receive benefits under both sections during any month.

Section 2. Section 92-709, R.C.M. 1947, is amended to read as follows:

"**92-709. Compensation in case of specified injuries.** *(1)* In addition *to temporary total disability benefits allowed in this act, indemnity benefits* for loss of a member shall be paid at the weekly rate provided in section 92-703.1, and shall be paid for the following periods:

For loss of:

One arm at or near shoulder	280 weeks
One arm at the elbow	240 weeks
One arm between wrist and elbow	220 weeks
One hand	200 weeks
One thumb and the metacarpal bone thereof	75 weeks
One thumb at the proximal joint	37 weeks
One thumb at the second distal joint	25 weeks
One first finger and the metacarpal bone thereof	40 weeks
One first finger at the proximal joint	30 weeks
One first finger at the second joint	22 weeks
One first finger at the distal joint	15 weeks
One second finger and the metacarpal bone thereof	37 weeks
One second finger at the proximal joint	20 weeks
One second finger at the second joint	15 weeks

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One second finger at the distal joint ..... 8 weeks
One third finger and the metacarpal bone thereof..... 25 weeks
One third finger at the proximal joint ..... 15 weeks
One third finger at the second joint ..... 10 weeks
One third finger at the distal joint..... 5 weeks
One fourth finger and the metacarpal bone thereof ..... 15 weeks
One fourth finger at the proximal joint..... 11 weeks
One fourth finger at the second joint ..... 8 weeks
One fourth finger at the distal joint..... 6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb.....300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb .....200 weeks
One leg between knee and ankle.....190 weeks
One foot at the ankle.....180 weeks
One great toe with the metatarsal bone thereof..... 37 weeks
One great toe at the proximal joint..... 18 weeks
One great toe at the second joint..... 12 weeks
One toe other than the great toe with the metatarsal bone thereof..... ..... 16 weeks
One toe other than the great toe at the proximal joint..... 8 weeks
One toe other than the great toe at second or distal joint..... 5 weeks
One eye by enucleation .....165 weeks
Total blindness of one eye .....140 weeks
Total loss of hearing, one ear..... 40 weeks
Total loss of hearing, both ears.....200 weeks

In all cases of permanent injury to a member less than loss of the member compensation shall be paid for total temporary disability, without limitation as to time under section 92-701.1. In addition thereto, indemnity benefits for permanent disability to a member or members shall be proportionate to loss or loss of use of the member or members at the weekly rate provided in section 92-703.1. In all other cases of permanent injury, less than total, not included in the above schedule, the compensation for partial disability shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to partial disability (500 weeks).

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Disfigurement: The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars ($2,500) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability

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caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services *and of any benefits paid under section 92-701.1 for temporary total disability.*"

Approved April 10, 1975.

CHAPTER NO. 387

AN ACT TO RECODIFY AND GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-101, R.C.M. 1947, is renumbered 4-1-101, and is amended to read as follows:

"**4-1-101. Citation — declaration of policy — subject matters of regulation.** This *title* may be cited as the "*Montana Alcoholic Beverage Code*". It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale and distribution of liquor within the state of Montana as that term is defined *in this code* subject to the authority of the state of Montana through the Montana *department of revenue.*

This code is an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes."

Section 2. Section 4-103, R.C.M. 1947, is renumbered 4-1-105, and is amended to read as follows:

"**4-1-105. Divisions of code.** This *code* is divided into six *chapters. Chapter 1* relates to the *authority of the department of revenue* to administer this act and the powers and functions of the *department. Chapter 2* relates to the establishment of state stores and the keeping and selling of liquors. *Chapter 3* relates to the *control of liquor, wine, and beer. Chapter 4* relates to *license administration. Chapter 5* relates to *identification cards. Chapter 6* relates to *enforcement.*"

Section 3. Section 4-107, R.C.M. 1947, is renumbered 4-1-301, and is amended to read as follows:

"**4-1-301. General powers and duties of the department.** The *department of revenue* shall have the powers and duties *to administer* the Montana *Alcoholic Beverage Code,* including the general control, management and supervision of all state liquor stores."

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Section 4. Section 4-109, R.C.M. 1947, is renumbered 4-1-307, and is amended to read as follows:

"**4-1-307. Principal office of department of revenue.** The principal office of the *department of revenue* shall be in the city of Helena."

Section 5. Section 4-112, R.C.M. 1947, is renumbered 4-1-302, and is amended to read as follows:

"**4-1-302. Functions, powers and duties of department of revenue.** The *department of revenue* shall have the following functions, duties and powers:

(a) To buy, import, and have in its possession for sale, and sell, liquors, in the manner set forth in this *code*;

(b) To control the possession, sale and delivery of liquors in accordance with the provisions of this *code*;

(c) To determine the municipalities within which state liquor stores shall be established throughout the state, and the situation of the stores within every such municipality;

(d) To lease, furnish and equip any building or land required for the operation of this *code*;

(e) To buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this *code*;

(f) To *employ store managers*, and also every officer, *investigator*, clerk or other employee, required for the operation or carrying out of this *code*, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(g) To determine the nature, form and capacity of all packages to be used for containing liquor kept or sold under this *code*;

(h) To grant and issue licenses under and in pursuance to this *code*;

(i) Without in any way limiting, or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the *department* for the purpose of carrying into effect the provisions of this *code*, or the regulations made thereunder."

Section 6. Section 4-113, R.C.M. 1947, is renumbered 4-1-303, and is amended to read as follows:

"**4-1-303. Regulations may be made by department of revenue — scope of regulations.** (1) The *department of revenue* may make such regulations, not inconsistent with this *code*, as to the *department of revenue* seem necessary, for carrying out the provisions of this *code*, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared the power of the *department* to make regulations in the manner set out in that subsection shall extend to and include the following:

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(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the *employees* of the *liquor division*, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this *code*;

(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;

(e) Prescribing, subject to this *code*, the hours during which state liquor stores shall be kept open for the sale of *alcoholic beverages*;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this *code*;

(g) Prescribing an official seal which shall be attached to every package of liquor sold or sealed under this *code*;

(h) Prescribing forms to be used for the purpose of this *code* or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this *code*;

(i) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(j) Prescribing the manner of giving and serving notices required by this *code* or the regulations thereunder;

(k) Prescribing the fees payable in respect of permits and licenses issued under this *code* for which no fees are prescribed in this *code*, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

(l) Prescribing, subject to the provisions of this *code*, the conditions and qualifications necessary for the obtaining of a *liquor or* beer license, and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

(m) Specifying and describing the place and the manner in which liquor *or beer* may be lawfully kept or stored;

(n) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this *code*, and the time and periods when, and the manner, methods and means by which liquor, under this *code*, may be lawfully conveyed or carried;

(o) Governing the conduct, management and equipment of any premises licensed to sell *liquor or* beer under this *code*;

(p) Providing for the imposition and collection of *taxes* and making

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regulations respecting returns, accounting and payment to the *department of revenue* of the *taxes.*

(3) Whenever it is provided in this *code* that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the *department of revenue,* subject to the restrictions set out in subsection (1) hereof, shall have the power to make regulations respecting such act, matter or thing."

Section 7. Section 4-114, R.C.M. 1947, is renumbered 4-2-101, and is amended to read as follows:

"**4-2-101. Establishment of state liquor stores — hours — kinds and prices of liquor.** The *department of revenue* shall establish and maintain *one or more stores, to be known as "state liquor stores,"* as the *department finds feasible* for the sale of liquor in accordance with the provisions of this *code* and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars ($450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars ($140,000) and up to four hundred and fifty thousand dollars ($450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars ($140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the *department* shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the *department* shall *enter into an agency agreement or* employ the necessary help to operate said stores and shall designate the duties to be performed by the *agent or* employees; the *department* may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the *department* shall deem advisable, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. *up to* the opening of normal business Tuesday a.m. as set by *department* regulation and including legal holidays."

Section 8. Section 4-116, R.C.M. 1947, is renumbered 4-2-106, and is amended to read as follows:

"**4-2-106. Provisions concerning sale of liquor.** A *store manager* may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this *code* and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price."

Section 9. Section 4-117, R.C.M. 1947, is renumbered 4-2-201, and is amended to read as follows:

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"**4-2-201. No reduction for quantity sales of liquor.** No reductions shall be made by the *department* for sales of liquor in quantity."

Section 10. Section 4-120, R.C.M. 1947, is renumbered 4-2-107, and is amended to read as follows:

"**4-2-107. Liquor not to be consumed on premises of state store.** No officer, clerk or servant of the *department*, employed in the state store, shall allow any liquor to be consumed on the premises of a state store, nor shall any person consume any liquor on such premises."

Section 11. Section 4-121, R.C.M. 1947, is renumbered 4-2-104, and is amended to read as follows:

"**4-2-104. When sales of liquor forbidden.** No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor

(a) on any holiday *recognized by state law*;

(b) during such other period and on such other days as the *department* may direct."

Section 12. Section 4-122, R.C.M. 1947, is renumbered 4-2-103, and is amended to read as follows:

"**4-2-103. Conveyance of liquors — opening liquor during transit forbidden.** It shall be lawful to carry or convey liquor to any state store, and to and from any warehouse or depot established by the *department* for the purposes of this *code*, and when permitted so to do by this *code* and the regulations made thereunder, and in accordance therewith, it shall be lawful for any common carrier, or other person, to carry or convey liquor sold by a vendor from a state store, or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured, or from premises where the beer may be lawfully kept and sold, to any place to which the same may be lawfully delivered under this *code*, and the regulations made thereunder;

Provided that no such common carrier or any other person, shall open, or break, or allow to be opened or broken, any package or vessel containing liquor, or drink or use, or allow to be drunk or used, any liquor therefrom, while being so carried or conveyed."

Section 13. Section 4-139, R.C.M. 1947, is renumbered 4-1-205, and is amended to read as follows:

"**4-1-205. Licensed hospital or health care facility — restrictions — violations.** Any person in charge of an institution regularly conducted as a *licensed* hospital *or health care facility*, may administer liquor purchased by him to any patient or inmate of the institution and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and every person in charge of an institution who administers liquor in evasion or violation of this *code* shall be guilty of an offense against this *code*."

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Section 14. Section 4-140, R.C.M. 1947, is renumbered 4-1-202, and is amended to read as follows:

"**4-1-202. Application of code.** (1) Nothing in this *code* shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana state *department of revenue* may make such regulations as the *department deems* necessary with respect thereto, not inconsistent with this *code*, or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, title 27, United States Code sections 201 through 212 inclusive or regulations issued under the provisions of the Internal Revenue Code, title 26, United States Code, sections 5001 through 5693, inclusive.

(2) Nothing in this *code* shall prevent—

(a) The sale of liquor by any person to the *department*;

(b) The purchase, importation and sale of liquor by the *department* for the purposes of and in accordance with this *code*."

Section 15. Section 4-141, R.C.M. 1947, is renumbered 4-1-203, and is amended to read as follows:

"**4-1-203. Preparations not subject to code.** (1) Subject to the provisions of this section, nothing in this *code* shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase or consumption—

(a) of any extract, essence or tincture or other preparation containing alcohol, which is prepared according to a formula of the United States Pharmacopoeia, or according to a formula approved of by the *department*; or

(b) of any proprietary or patent medicine prepared according to a formula approved of by the *department*.

(2) The *department*, if of opinion that any such proprietary or patent medicine, extract, essence, tincture or preparation which contains alcohol, or any other preparation of a solid, semisolid or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state, or the possession of the same for sale by retail within the state, except by a state liquor store, or by persons duly licensed by the *department* to keep and sell the same by retail in accordance with this act and the regulations made thereunder.

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(3) The *department* shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture or preparation, of the said prohibition and from and after the date of such notification any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture or preparation so prohibited as aforesaid shall be guilty of an offense under this *code*."

Section 16. Section 4-150, R.C.M. 1947, is renumbered 4-1-201, and is amended to read as follows:

"**4-1-201. Sale of liquor, possession of liquor, when unlawful.** (1) Except as provided by this *code*, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

(2) No person shall have or keep any liquor within the state which has not been purchased from *the* state of Montana; provided, however, that nothing in this *code* shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed *three (3)* wine *gallons* of alcoholic liquor *or beer*, which liquor *or beer* shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than *three (3)* wine *gallons* of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the *department* or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this *code*.

(3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the *department*, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee."

Section 17. Section 4-152, R.C.M. 1947, is renumbered 4-2-105, and is amended to read as follows:

"**4-2-105. Place and time of selling liquor.** No *store manager*, and no person acting as the clerk or servant of or in any capacity for any *manager*, shall sell liquor in any other place or at any other time or otherwise than as authorized by this *code* and the regulations."

Section 18. Section 4-153, R.C.M. 1947, is renumbered 4-1-304, and is amended to read as follows:

"**4-1-304. Liquor division employees not to be interested in liquor sales — unlawful to give or receive gift, commission or remuneration.** (1) No *officer* or employee of the *liquor division* shall be directly or indirectly interested or engaged in any other business or undertaking

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dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the *division* or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or *division* in pursuance of this *code*.

(3) No person selling or offering for sale to, or purchasing liquor from, the state *liquor division*, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the *division* or to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the *division* from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any spirituous liquors to the Montana liquor *division* shall submit, without cost to the *division* prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding twenty-five (25) fluid ounces of such merchandise to the board.

(b) It shall be the duty of the *division*, when a brand of liquor has been accepted for testing by the *division*, to forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The *division* shall maintain written records of all samples received; such records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the *division's* action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage shall be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor *division*, for any purpose whatsoever other than by sale at the prevailing state retail prices, or for destroying damaged or defective merchandise. The *division* shall maintain a written record including the type, brand, and container size; number of bottles or other units; signatures of witnesses; and method of destruction or other disposition of damaged or defective warehouse or state store merchandise."

Section 19. Section 4-154, R.C.M. 1947, is renumbered 4-6-101, and is amended to read as follows:

"**4-6-101. Transfer of alcoholic beverages except as provided by code unlawful.** Except as provided in this *code*, no person shall, within the state, by himself, his clerk, servant, or agent, attempt to purchase, or directly or indirectly or upon any pretense or upon any device, purchase, or in consideration of the sale or transfer of any property, or for any other consideration, or at the time of the transfer of any property, take or accept from any other person any *alcoholic beverage*."

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Section 20. Section 4-156, R.C.M. 1947, is renumbered 4-6-106, and is amended to read as follows:

"**4-6-106. Consumption of alcoholic beverage on druggists' premises prohibited.** No person, within the state of Montana, shall consume any *alcoholic beverage* on any premises where *an alcoholic beverage* is kept for sale by a druggist, nor shall any druggist permit any *alcoholic beverage* to be consumed on such premises."

Section 21. Section 4-158, R.C.M. 1947, is renumbered 4-3-102, and is amended to read as follows:

"**4-3-102. Liquor container must have been sealed with official seal**. Except in the case of—

(a) liquor imported by the state, or by the *department*; or

(b) liquor had and kept by a person, and in a place and manner referred to in section *4-1-202*; or

(c) beer and malt liquor, lawfully had or kept under this *code*; or

(d) any liquor kept for sale by a druggist under *this code* no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this *code*."

Section 22. There is a new R.C.M. section numbered 4-6-205, that reads as follows:

4-6-205. Unlawful alcoholic beverage — seizure — forfeiture. Any investigator or peace officer who finds an alcoholic beverage, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code, may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person for a violation of any provision of this section the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

Section 23. Section 4-160, R.C.M. 1947, is renumbered 4-6-103, and is amended to read as follows:

"**4-6-103. Providing alcoholic beverage prohibited.** *(1)* No *store manager, retail* licensee, nor any employee of a *store manager, or retail* licensee, *may* sell any *alcoholic beverage*, or permit any *alcoholic beverage* to be sold, to any person apparently under the influence of *an alcoholic beverage.*

(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol."

Section 24. Section 4-161, R.C.M. 1947, is renumbered 4-6-104, and is amended to read as follows:

"**4-6-104. Age limit for sale of alcoholic beverages.** Except in the

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case of *an alcoholic beverage* given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply *an alcoholic beverage* to any person under the age of eighteen (18) years, or permit any person under that age to consume *an alcoholic beverage.*"

Section 25. Section 4-208, R.C.M. 1947, is renumbered 4-6-203, and is amended to read as follows:

"**4-6-203. Search warrants — issuance.** Upon information on oath by any *investigator* appointed under this *code* or by any peace officer showing reasonable cause to believe that *alcoholic beverages are* unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any *court* by warrant to authorize and empower the *investigator* or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any closet, cupboard, box, or other receptacle therein which might contain *alcoholic beverages.*"

Section 26. Section 4-209, R.C.M. 1947, is renumbered 4-6-207, and is amended to read as follows:

"**4-6-207. Seizure of alcoholic beverage and conveyance — forfeiture of conveyance and alcoholic beverage to state.** Whenever an *investigator or* any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description *an alcoholic beverage* which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this *code*, he may forthwith seize the *alcoholic beverage* and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which *the alcoholic beverage* is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such *alcoholic beverages* contrary to any of the provisions of this *code* in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the *alcoholic beverage* or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered 4-6-208, and is amended to read as follows:

"**4-6-208. Force may be used in seizure of alcoholic beverages, when — retention of seized alcoholic beverage — forfeiture — hearing.** (1) Where *alcoholic beverage* is found by any *investigator* or peace officer on any premises or in any place in such quantities as to satisfy

the *investigator* or peace officer that such *alcoholic beverage* is being had or kept contrary to any of the provisions of this *code*, it shall be lawful for the *investigator* or peace officer to forthwith seize and remove, by force if necessary, any *alcoholic beverage* so found, and the packages in which the *alcoholic beverage* was had or kept and immediately turn said *alcoholic beverage* over to the Montana *department of revenue*.

(2) The Montana *department of revenue* shall commence an action in the district court of the county in which the *alcoholic beverage* is found and seized against said *alcoholic beverage* and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The *alcoholic beverage* shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana *department of revenue* claims the right to the possession of *the alcoholic beverage* and shall demand that all persons who claim any right to the possession of *the alcoholic beverage* shall show the nature of their claim or claims and that the court declare *the alcoholic beverage* contraband and that the court order *alcoholic beverage* be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where *the alcoholic beverage* was seized if a newspaper is published in said county.

(5) In all actions brought under this *code*, proof of the absence of the official seal of the Montana *department of revenue* upon the bottle, jug, package, container or containers of *an alcoholic beverage on which a seal is required* shall be prima facie evidence that *the alcoholic beverage* is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the Montana *department of revenue*, and the court shall order all such *alcoholic beverage* contraband and forfeited to the state of Montana."

Section 28. Section 4-211, R.C.M. 1947, is renumbered 4-6-209, and is amended to read as follows:

"**4-6-209. Disposal of forfeited alcoholic beverage — report by officers of seizure.** (1) In every case in which a court makes any order for the forfeiture of *alcoholic beverages* under any of the provisions of this act, and in every case in which any claimant to *an alcoholic beverage* under the provisions of section *4-6-207*, fails to establish his claim and right thereto, the *alcoholic beverage* in question and the packages in which the *alcoholic beverage* is kept shall forthwith be delivered to the *department*. The *department* shall thereupon, determine the market value of all forfeited *alcoholic beverage* which is found to be suitable for sale in the state liquor stores, and the *department* shall pay the amount so determined to the state treasurer, after deducting therefrom the expenses necessarily incurred by the *department* for transporting the forfeited *alcoholic beverage* to the state liquor warehouses, and the *alcoholic bever-*

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age suitable for sale shall be taken into stock by the *department* and sold under the provisions of this *code*. All forfeited *alcoholic beverage* which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the *department*.

(2) In every case in which *an alcoholic beverage* is seized by a peace officer it shall be his duty to forthwith make or cause to be made to the *department* a report in writing, of the particulars of such seizure."

Section 29. Section 4-212, R.C.M. 1947, is renumbered 4-6-210, and is amended to read as follows:

"**4-6-210. Inspection of carriers' records — when authorized.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this *code*, the *department* or any person appointed by it in writing for the purpose may inspect the freight and express books and records, and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered 4-6-211, and is amended to read as follows:

"**4-6-211. Unlawful for carrier to refuse inspection of records.** Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the *department* or by a person so appointed by it shall be guilty of an offense against this *code*."

Section 31. Section 4-214, R.C.M. 1947, is renumbered 4-6-303, and is amended to read as follows:

"**4-6-303. Description of offense — sufficiency of.** In describing the offense respecting the sale or keeping for sale or other disposal of *alcoholic beverages*, or the having, keeping, giving, purchasing or the consumption of *alcoholic beverages* in any information, summons, conviction, warrant, or proceeding under this *code*, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of *alcoholic beverages*, simply without stating the name or kind of such *alcoholic beverage* or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of *alcoholic beverage* so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered 4-6-304, and is amended to read as follows:

"**4-6-304. Description of offense — sufficiency — defenses need**

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not be negatived. The description of any offense under this *code*, in the words of this *code* or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this *code*, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified nor negatived shall be required on the part of the informant or complainant."

Section 33. Section 4-216, R.C.M. 1947, is renumbered 4-6-305, and is amended to read as follows:

"**4-6-305. Sufficiency of evidence.** In any prosecution under this *code* for the sale or keeping for sale or other disposal of *alcoholic beverages*, or the having, keeping, giving, purchasing, or consuming of *alcoholic beverages*, it shall not be necessary that any witness should depose to the precise description or quantity of the *alcoholic beverages* sold, disposed of, kept, had, given, purchased, or consumed, or the precise consideration (if any) received therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt."

Section 34. Section 4-217, R.C.M. 1947, is renumbered 4-6-306, and is amended to read as follows:

"**4-6-306. Proof of violation — sufficiency.** In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of *alcoholic beverages*, it shall not be necessary in any prosecution to show that any money actually passed or any *alcoholic beverages* was actually consumed, if the court hearing the case is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place, or that any consumption of *alcoholic beverages* was about to take place; and proof of consumption or intended consumption of *alcoholic beverages* on premises on which such consumption is prohibited, by some person not authorized to consume *an alcoholic beverage* thereon, shall be evidence that such *alcoholic beverage* was sold or given to or purchased by the person consuming, or being about to consume, or carrying away the same, as against the occupant of the said premises."

Section 35. Section 4-218, R.C.M. 1947, is renumbered 4-6-307, and is amended to read as follows:

"**4-6-307. Analyst's report as prima facie evidence of contents.** In any prosecution under this *code*, or the regulations made thereunder, production by a police officer, policeman, constable, inspector or peace officer, of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any *alcoholic beverage* or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature."

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Section 36. Section 4-219, R.C.M. 1947, is renumbered 4-6-308 and is amended to read as follows:

"**4-6-308. Presumption of intoxicating beverage arises, when.** The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the *alcoholic beverage* in question is intoxicating from the fact that a witness described it as intoxicating, or by a name which is commonly applied to an intoxicating *beverage*."

Section 37. Section 4-220, R.C.M. 1947, is renumbered 4-6-309, and is amended to read as follows:

"**4-6-309. Inferences from facts of code claimed to be violation.** Upon the hearing of any charge of selling or purchasing *an alcoholic beverage*, or of unlawfully having or keeping *an alcoholic beverage*, contrary to any of the provisions of this *code*, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of *alcoholic beverages* found in the possession of the person accused, or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him, and from the frequency with which *the alcoholic beverage* is received thereat or therein or is removed therefrom, and from the circumstances under which it is kept or dealt with."

Section 38. Section 4-224, R.C.M. 1947, is renumbered 4-6-302, and is amended to read as follows:

"**4-6-302. Appeals.** An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this *code* and the practice and procedure on any appeal from any such conviction or order, and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases."

Section 39. Section 4-225, R.C.M. 1947, is renumbered 4-6-201, and is amended to read as follows:

"**4-6-201. Investigators and prosecuting officers may be employed by department of revenue.** The *department of revenue* may appoint one or more *investigators* or prosecuting officers, who, under its direction, shall perform such duties as it may require, and who shall be paid such salaries, fees and expenses as the said *department of revenue* may fix."

Section 40. Section 4-226, R.C.M. 1947, is renumbered 4-1-306, and is amended to read as follows:

"**4-1-306. Property and moneys acquired belong to state — expenses of administration, how paid.** All property, whether real or personal, all moneys acquired, administered, possessed or received by the *department* and all profits earned in the administration of this *code*, shall be the property of the state, and all expenses, debts and liabilities incurred by the *department* in connection with the administration of this *code*, shall be paid by the *department* from the moneys received by the *department* under such administration."

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Section 41. Section 4-229, R.C.M. 1947, is renumbered 4-1-406, and is amended to read as follows:

"**4-1-406. Disposition of money received.** All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the *department of revenue.* The *department* is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The *department* shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the *department* shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the *department* solely from funds derived from the operation of state liquor stores. The *department* shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores."

Section 42. Section 4-233, R.C.M. 1947, is renumbered 4-1-104, and is amended to read as follows:

"**4-1-104. Intent and construction of code.** The purpose and intent of this *code* are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this *code*, and every section and provision of this *code* shall be construed accordingly. The provisions of this *code* dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a *department* and otherwise provide the means by which such state control shall be made effective, and nothing in this *code* shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state."

Section 43. Section 4-238, R.C.M. 1947, is renumbered 4-6-401, and is amended to read as follows:

"**4-6-401. Premises where liquor illegally sold public nuisance.** Any room, house, building, boat, vehicle, structure or place where *alcoholic beverages are* knowingly manufactured, sold, or bartered, in violation of *this code or section 94-8-107* and all property knowingly kept and used in maintaining the same is hereby declared to be a *public* nuisance and any person who maintains such a nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars ($100.00), nor more than five hundred dollars *($500)* and by imprisonment not less than thirty days, nor more than six months."

Section 44. Section 4-240, R.C.M. 1947, is renumbered 4-1-401, and is amended to read as follows:

"**4-1-401. License tax on liquor — amount — distribution of proceeds.** The department of revenue is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of five percent (5%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought

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into the state and taxed by the department of revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by *the department.* Said five percent (5%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such five percent (5%) license tax so received in a separate account. Four-fifths (4/5) of these revenues shall be distributed to the counties according to the amount of liquor purchased in each county. One-fifth (1/5) of these revenues shall be deposited in the general fund. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section *4-1-402,* R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (¼) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (¾) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county."

Section 45. Section 4-301, R.C.M. 1947, is renumbered 4-1-102, and is amended to read as follows:

"**4-1-102. Declaration of policy — as to sale of beer.** It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this *code* and which contains not more than *seven* per centum (*7%*) of alcohol by weight, shall be controlled and regulated *as provided under this code.* Beer, porter, ale, stout and malt liquors containing more than *seven* per centum (*7%*) of alcohol by weight and which are defined as "liquor" shall be subject to the regulations and controls provided *for liquor.*

Section 46. Section 4-303, R.C.M. 1947, is renumbered 4-3-304, and is amended to read as follows:

"**4-3-304. Closing hours for licensed retail establishments.** Hereafter all licensed establishments wherein *alcoholic beverages are* sold, offered for sale or given away at retail shall be closed during the following hours:

(a) On any day between two A.M. and eight A.M.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of *alcoholic beverages,* then the sale of *alcoholic beverages* is prohibited within the limits of any such city or town during the time such sale is prohibited by this *code* and in addition thereto during the hours that it is prohibited by such ordinance. *During such hours all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in section 4-3-305.*"

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Section 47. Section 4-304, R.C.M. 1947, is renumbered 4-3-305, and is amended to read as follows:

"**4-3-305. Sale of alcoholic beverages during closed hours forbidden — lawful business need not be closed.** During the hours when the said licensed establishments where *alcoholic beverages are* sold at retail are required by this *code* to be closed, it shall be unlawful to sell, offer for sale or give away any *such alcoholic beverages*, and during such hours all persons save employees of such licensed establishments shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold."

Section 48. Section 4-308, R.C.M. 1947, is renumbered 4-3-202, and is amended to read as follows:

"**4-3-202. Beer sale by department prohibited.** The sale of beer by the *department* is hereby prohibited."

Section 49. Section 4-309, R.C.M. 1947, is renumbered 4-3-201, and is amended to read as follows:

"**4-3-201. Possession, manufacture or disposal of beer in other manner than prescribed unlawful.** It shall be unlawful to manufacture or sell, or dispose of, or possess for the purpose of sale, beer of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this *code*."

Section 50. Section 4-310, R.C.M. 1947, is renumbered 4-4-101, and is amended to read as follows:

"**4-4-101. Applications for sale or manufacture of beer — qualifications of applicant.** Any person, desiring to manufacture, *import or* sell beer under the provisions of this *code*, shall first apply to the *department* for a permit so to do and pay with such application the license fee herein prescribed; the *department* shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the *department* shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the *department* shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned."

Section 51. Section 4-311, R.C.M. 1947, is renumbered 4-3-203, and is amended to read as follows:

"**4-3-203. Brewers' monthly report — power of department to inspect books and premises.** Every brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the *department* of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the *department*,

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and the *department* shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered 4-3-204, and is amended to read as follows:

"**4-3-204. Sale of beer by brewers — to whom.** It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any *licensed* wholesaler."

Section 53. Section 4-317, R.C.M. 1947, is renumbered 4-3-206, and is amended to read as follows:

"**4-3-206. Licenses of brewers — persons to whom brewers may sell beer.** Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section *4-4-401* and upon presenting satisfactory evidence to the *department* as required by section *4-4-101*, shall be licensed by the *department* in accordance with the provisions of this *code* and such regulations as may be prescribed by the *department*, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer."

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered 4-4-102, and is amended to read as follows:

"**4-4-102. Right of brewers to maintain and operate storage depots — annual licenses.** It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon the payment to the *department* of an annual license fee, in addition to all other fees and taxes required to be paid by such brewer, of four hundred dollars ($400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this *code*."

Section 55. Section 4-317.7, R.C.M. 1947, is renumbered 4-3-212, and is amended to read as follows:

"**4-3-212. Agreements filed with department of revenue.** An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall

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file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the *department* shall not be considered by any court as having any force or effect."

Section 56. Section 4-318, R.C.M. 1947, is renumbered 4-4-103, and is amended to read as follows:

"**4-4-103. Wholesalers' licenses — application for and issuance — subwarehouse — imported beer handled through warehouse or subwarehouse.** Any person desiring to sell and distribute beer as a wholesaler under the provisions of this *code* shall apply to the *department* for a license to do so and tender with his application the license fee hereinafter provided for and the *department* is hereby empowered, authorized and directed to issue wholesale *licenses* to qualified applicants in accordance with the provisions of this *code*; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall *be* a resident of Montana; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall *be* authorized to do business in Montana; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each wholesale licensee, which said duplicate license shall at all times be prominently displayed at said subwarehouse.

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said wholesaler shall distribute said beer from such warehouse or subwarehouse; said wholesaler shall keep records at his principal place of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the *department*; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the *department and* may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 57. Section 4-319, R.C.M. 1947, is renumbered 4-3-213, and is amended to read as follows:

"**4-3-213. Monthly report of wholesaler.** Every wholesaler, licensed to do business in this state, as herein provided, shall on or before the

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fifteenth day of each month, make an exact return to the *department* of the amount of beer manufactured in this state, sold and delivered by him, and also of the amount of beer manufactured in places outside of the state, sold and delivered by him, during the previous month, and of his inventory in the manner and form as shall be prescribed by the *department*, and the *department* shall have the right at any time to make an examination of the said wholesaler's books and of his premises, and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand."

Section 58. Section 4-320, R.C.M. 1947, is renumbered 4-6-403, and is amended to read as follows:

"**4-6-403. Penalty for brewer's and wholesalers' failure to pay tax.** Any tax *owed by a brewer or wholesaler under this code* not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any *brewer or* wholesaler who fails, neglects or refuses to make the return to the *department* provided for in *sections 4-3-203 or 4-3-213*, or refuses to allow such examination as provided for in *sections 4-3-203 or 4-3-213*, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars ($1,000.00)."

Section 59. Section 4-321, R.C.M. 1947, is renumbered 4-3-214, and is amended to read as follows:

"**4-3-214. To whom wholesaler may sell.** It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, or to a common carrier, holding and having a license under this act."

Section 60. Section 4-325, R.C.M. 1947, is renumbered 4-3-217, and is amended to read as follows:

"**4-3-217. Penalty for brewer's failure to make returns — lien of taxes — enforcement — release.** If any brewer subject to the payment of the tax provided for in section *4-1-405* or any wholesaler subject to the payment of the tax provided for in section *4-1-404*, shall fail, neglect or refuse to make any return required by *this code*, or shall fail to make payment of such tax within the time herein provided, the *department* shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the first failure, willful neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect or refusal, which shall be in addition to the five per cent (5%) penalty hereinbefore provided for nonpayment of such tax within the time hereinbefore provided. Said tax

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and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such returns should have been made and said tax paid. The *department* shall then proceed to collect such tax with penalties and interest. Upon request of the *department* it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax. All taxes due from any brewer or wholesaler under the provisions of *this code*, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the *department* of a duplicate copy of the statement so made by the *department*, or a certified copy of any return filed with *the department*, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the *department* shall release the said lien by filing in the office of the county clerk wherein is filed the said lien a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the *department* may release from the operation of said lien a part of said property to enable the brewer or wholesaler to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the *department*, sufficient property subject to said lien to ensure the payment of the whole of said unpaid taxes, penalty and interest."

Section 61. Section 4-326, R.C.M. 1947, is renumbered 4-3-218, and is amended to read as follows:

"**4-3-218. Carriers' reports of beer transported.** Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the fifteenth day of each month, make an exact return to the *department* of the amount of such beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered."

Section 62. Section 4-327, R.C.M. 1947, is renumbered 4-4-104, and is amended to read as follows:

"**4-4-104. Retailers' license — application and issuance — display required — check of alcoholic content by department.** Any person desiring to possess and have for sale beer, under the provisions of this *code*, for the purpose of selling it at retail, shall first apply to the *department* for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the *department* shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the *department* shall find that the applicant is not qualified, no license shall

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be granted and the license fee tendered shall be by the *department* returned. The *department* shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic contents of the beer kept by him for sale. *A person may not sell beer at retail without a valid license issued under this code.*"

Section 63. Section 4-328, R.C.M. 1947, is renumbered 4-3-302, and is amended to read as follows:

"**4-3-302. Sale of beer by retailer — consumption on premises.** It shall be lawful for such retailer to sell and serve beer either on draught or in *containers* to the public to be consumed on the premises of such retailer."

Section 64. Section 4-330, R.C.M. 1947, is renumbered 4-3-301, and is amended to read as follows:

"**4-3-301. Purchase of beer by retailer — persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers.** It shall be unlawful for *a licensed* retailer to purchase or acquire beer from anyone except a brewer or wholesaler licensed under the provisions of this *code.*

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;

2. Any intoxicated person or any person actually, apparently or obviously intoxicated."

Section 65. Section 4-332, R.C.M. 1947, is renumbered 4-4-105, and is amended to read as follows:

"**4-4-105. Special permits to sell beer — application and issuance — fee.** (1) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

The application of any such association or corporation *shall be presented ten (10) days in advance and* shall describe the location of such enclosure wherein such event is held, the nature of such event, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when events are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of fifteen dollars ($15) per day for

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each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than thirty dollars ($30), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this *code*, shall in the discretion of the *department*, without notice or hearing as provided in section *4-4-302*, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars ($10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the *department* shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered 4-4-201, and is amended to read as follows:

"**4-4-201. Issuance of retail beer licenses — limit on number of beer licenses — wine license amendments — retail license fee.** (1) Except as otherwise provided by law, a license to sell beer at retail, *or beer and wine at retail pursuant to subsection (2),* in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved by the *department* as a fit and proper person, firm or corporation to sell beer; provided, that:

(a) *the* number of retail beer licenses that the *department* may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than one (1) retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, one (1) beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, two (2) additional retail beer licenses for the first two thousand (2000) inhabitants or major fraction thereof and one (1) additional retail beer license for each additional two thousand (2000) inhabitants which shall not be used in conjunction with retail liquor licenses. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a dis-

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tance of five (5) miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail beer licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided, that such limitations shall not prevent the issuance of a nontransferable and nonassignable retail beer license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the *department* may issue; provided that no retail beer license may be issued by the *department* for any premises situated within any zone of such city or town wherein the sale of beer is prohibited by ordinance, a certified copy of which has been filed with the *department.* The *department* shall have discretion to deny the issuance of a retail beer license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail beer licenses that the *department* may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporated limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the *department* in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the *department* shall determine that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The *division* may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine *for consumption on the premises.* He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars ($200).

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(4) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by the department as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license."

Section 67. Section 4-338, R.C.M. 1947, is renumbered 4-3-104, and is amended to read as follows:

"4-3-104. Purchase of beer must be from licensed brewer, wholesaler or retailer. It shall be unlawful for the operator of any common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer *or* wholesaler duly licensed."

Section 68. Section 4-341, R.C.M. 1947, is renumbered 4-4-401, and is amended to read as follows:

"4-4-401. Fees for licenses — expiration dates — regulation by cities and towns. Each licensee, under the provisions of this *code*, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars *($500)*;

Each "wholesaler" four hundred dollars *($400)*;

Each "retailer" two hundred dollars *($200)*;

Any unit of a nationally chartered veterans' organization fifty dollars *($50)*;

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana *department of revenue* with the consent of the said *department* provided that said transferee shall qualify under this *code*. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana *department of revenue* based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana *department of revenue*. This *code* shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of *this code* which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana."

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Section 69. Section 4-342, R.C.M. 1947, is renumbered as section 4-4-402, and is amended to read as follows:

"**4-4-402. Denial of application for license or renewal — suspension or revocation — actions.** The *department* may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under *this code.* If the *department,* after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this *code,* or any rules, or regulations of the *department,* it may, in its discretion, and in addition to the other penalties herein prescribed, *reprimand a licensee,* proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof *or impose a civil penalty not to exceed one thousand five hundred dollars ($1500), subject to the opportunity for a hearing under the Montana Administrative Procedure Act.*"

Section 70. Section 4-344, R.C.M. 1947, is renumbered 4-6-301, and is amended to read as follows:

"**4-6-301. Jurisdiction of courts.** *As to misdemeanor actions, the* district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this *code.*"

Section 71. Section 4-346, R.C.M. 1947, is renumbered 4-6-402, and is amended to read as follows:

"**4-6-402. Action to enjoin nuisance — injunction — order of court — bond.** An action to enjoin any nuisance defined in this *code* may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no *liquor or* beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred

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dollars *($500)*, nor more than one thousand dollars *($1,000)*, payable to the state of Montana, and conditioned that *liquor or* beer will not thereafter be manufactured, sold or bartered therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violations of this *code* upon said property."

Section 72. Section 4-347, R.C.M. 1947, is renumbered 4-1-407, and is amended to read as follows:

"**4-1-407. Revenue to be paid to state treasurer — disposition of revenue.** Except as provided in section *4-1-408* of this *code*, all fees, charges, taxes and revenues collected by or under authority of the Montana *department*, shall be paid over to the state treasurer on or before the tenth (10th) day of each and every month who shall deposit said funds to the credit of the state general fund."

Section 73. Section 4-347.1, R.C.M. 1947, is renumbered 4-1-408, and is amended to read as follows:

"**4-1-408. Revenue allocation.** All revenue received from taxes on beer under sections *4-1-404* and *4-1-405*, R.C.M. 1947, over and above one dollar and fifty cents ($1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health."

Section 74. Section 4-349, R.C.M. 1947, is renumbered 4-3-219, and is amended to read as follows:

"**4-3-219. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified.** (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

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2. Advertising matter or novelties, of a value of not to exceed fifteen dollars *($15)* in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

4. Maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition."

Section 75. There is a new R.C.M. section numbered 4-3-220, that reads as follows:

4-3-220. Financial interest in retailers prohibited. No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

Section 76. There is a new R.C.M. section numbered 4-3-221, that reads as follows:

4-3-221. Seven day credit limitation. No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

Section 77. Section 4-358, R.C.M. 1947, is renumbered 4-3-222, and is amended to read as follows:

"**4-3-222. Limitations on advertising of beer.** It shall be lawful to

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advertise beer containing not more than *seven* per centum (*7%*) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section *4-3-219* of this *code*, and subject to (b) the restrictions on retailers, to wit: No retail licensee shall display, or permit to be displayed, on the exterior portion or surface of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade-mark or other designation indicating the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever."

Section 78. Section 4-401, R.C.M. 1947, is renumbered 4-1-103, and is amended to read as follows:

"**4-1-103. Declaration of policy as to retail sale of liquor.** It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to ensure the entire control of the sale of liquor in the Montana *department of revenue*, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said *department* be empowered and authorized to grant licenses to persons qualified under this *code*, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this *code* and under rules and regulations promulgated by the said *department*, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this *code*. The restrictions, regulations and provisions contained in this *code* are enacted by the legislature for the protection, health, welfare and safety of the people of the state."

Section 79. Section 4-403, R.C.M. 1947, is renumbered 4-4-202, and is amended to read as follows:

"**4-4-202. All-beverage license quota.** (1) Except as otherwise provided by law, a license to sell liquor, *beer and wine* at retail, *an all-beverages license,* in accordance with the provisions of this *code* and the regulations of the Montana *department of revenue*, may be issued to any person who shall be approved by *the department* as a fit and proper person to sell *such beverages*; provided, that:

(a) *the* number of *all-beverages* licenses that the *department* may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail licenses for the first one thousand (1000) inhabitants and one (1) retail

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license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail licenses for the first three thousand (3000) inhabitants and one (1) retail license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, *exclusive of* the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations. *Notwithstanding the preceding sentence, the total population for determining the quota of a city may include, with the city's population, the population residing outside, but within five (5) miles of the city limits in a case where the number of persons residing outside but within five (5) miles of the city exceeds the number of persons residing within the city. Such a determination may be made only upon a special census taken by the department or its agent at the expense of the applicant for a license under this section.* The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail *all-beverages* licenses of issue on the date of the passage and approval of this *code* and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the *department* may issue; provided that no retail license may be issued by the *department* for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the *department.* The *department* shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) *the* number of retail *all-beverages* licenses that the *department* may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county."

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Section 80. There is a new R.C.M. section numbered 4-4-203, that reads as follows:

4-4-203. Lapse of license for nonuse. From and after February 1, 1949, any retail license issued pursuant to this code (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the department to close, has licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

Section 81. There is a new R.C.M. section numbered 4-4-204, that reads as follows:

4-4-204. Resort licenses. It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the department may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be first promulgated on or before December 31, 1975. In addition to the other requirements of this code, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars ($500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the department shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the

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last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the department.

The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the department. At least thirty (30) days prior to the date of the hearing, the department shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication. Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the department may be reviewed pursuant to the review procedure set forth in section 4-4-402.

Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete and the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-4-206 herein, no resort retail liquor license may be sold or

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transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars ($2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-4-202 above and a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-4-302.

Section 82. Section 4-406, R.C.M. 1947, is renumbered 4-4-404, and is amended to read as follows:

"**4-4-404. Fee for and expiration of licenses.** Effective July 1, 1944, and at the same date of each year thereafter, the Montana *department of revenue* shall issue licenses for the retail sale of *alcoholic beverages* liquor on an annual basis, and at such fees as are prescribed by law, and such licenses shall expire at midnight of June 30th of the succeeding year. *The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency.*"

Section 83. Section 4-407, R.C.M. 1947, is renumbered 4-4-301, and is amended to read as follows:

"**4-4-301. Application for license — penalty for false statements.** Prior to the issuance of a license as herein provided, the applicant shall file with the Montana *department of revenue* an application in writing, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the *alcoholic beverage* is to be sold, as may be required by the *department.*

The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of a misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the applicant, or applicants, subjected to the penalties provided by law."

Section 84. Section 4-407.1, R.C.M. 1947, is renumbered 4-4-302, and is amended to read as follows:

"**4-4-302. Notice of application — publication — protest.** When an application has been filed with the Montana *department of revenue* for a license to sell *alcoholic beverages* at retail, or to transfer such license, the *department* shall promptly publish in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has made application for such license, and that protests against the issuance of a license to the applicant will be heard at a time *and place* stated in the notice, which shall be in the city of Helena, Montana. Notice of application for a new license shall be published once a week for four (4) consecutive weeks. Notice of application for transfer of a license shall be published once a week for two (2) consecutive weeks. Notice may be substantially in the following form:

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NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is hereby given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail *all-beverages* license with the Montana *department of revenue*, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the .... day of ...., 19.., at the office of the Montana *department of revenue,* in Helena, Montana.

Dated ....

Signed .....
ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this *code* be issued if the said Montana *department of revenue* shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of *this code* will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana *department of revenue*, an amount sufficient to cover the costs of publishing said notice."

Section 85. Section 4-408, R.C.M. 1947, is renumbered 4-4-303, and is amended to read as follows:

"**4-4-303. Investigation of application.** Upon receipt of *a completed* application for a license under this *code*, accompanied by the necessary license fee and bond, the *department of revenue* shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this *code* and the rules and regulations promulgated by the *department* are met and complied with."

Section 86. Section 4-408.1, R.C.M. 1947, is renumbered 4-4-304, and is amended to read as follows:

"**4-4-304. Fingerprints required of licensees.** All applicants for a Montana retail *all-beverages* or beer license, including corporate officers *and managers*, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license."

Section 87. Section 4-409.1, R.C.M. 1947, is renumbered 4-4-106, and is amended to read as follows:

"**4-4-106. Special permits to sell alcoholic beverages — application and issuance — fee.** Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the *department of revenue*, without notice or hearing as provided in section *4-4-302*, be entitled to a special permit to sell *all alcoholic beverages* at

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such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of *twenty* dollars *($20).*

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the *department* shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 88. Section 4-410, R.C.M. 1947, is renumbered 4-4-206, and is amended to read as follows:

"**4-4-206. Contents of license — posting — privilege — transfer — expiration.** *(1)* Every license issued under this *code* shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the *department* shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the *department* or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this *code* shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(3) In the event of a major loss or damage to licensed premises by unforeseen natural causes, or in case of expiration of lease of the licensed premises, or in the event of eviction or increase of rent by the landlord, in case of rented, licensed premises, or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the *department* for a transfer of the license to a different premises, the *department* may in its discretion permit a transfer in such cases if it appears to the *department* that such a transfer is required to do justice to the licensee applying for the transfer. The *department* shall in no event, nor for any cause, permit a transfer to a different premises where the sanitary, health and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(4) Upon a bona fide sale of the business operated under any license the license may be transferred to a qualified purchaser. No transfer of

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any license as to person or location shall be effective unless and until approved by the *department* and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the *department*, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the *department; however, the department may, within its discretion permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.*

(a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least twenty-five percent (25%) in the most recent census; and

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than twenty-five percent (25%) in the most recent census; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license transferred between quota areas under this section may not be mortgaged or pledged as security, and may not be transferred to another person, except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the *department*, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year."

Section 89. Section 4-411, R.C.M. 1947, is renumbered 4-4-207 and is amended to read as follows:

"4-4-207. Limit one license to person — business in name of licensee. No person shall be granted more than one *all-beverages* license in any year. *No business may be carried on under any license issued under this chapter except in the name of the licensee."*

Section 90. Section 4-412, R.C.M. 1947, is renumbered 4-4-108, and is amended to read as follows:

"4-4-108. License as privilege — criteria for decision on application.

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A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) neither the applicant nor any member of his immediate family has an ownership interest in any other establishment licensed under this chapter for all-beverages sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

(2) the applicant is a resident of the state and is qualified to vote in a state election; and

(3) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments."

Section 91. Section 4-413, R.C.M. 1947, is renumbered 4-3-306, and is amended to read as follows:

"4-3-306. Persons to whom alcoholic beverage may not be sold or given. *(1)* No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any *alcoholic beverage* to:

(a) Any person under the age of eighteen (18) years.

(b) Any intoxicated person or any person actually, apparently or obviously intoxicated.

(2) Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining *an alcoholic beverage* from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section *94-5-610* provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of *an alcoholic beverage* to any person in violation of any federal law."

Section 92. Section 4-415, R.C.M. 1947, is renumbered 4-4-107, and is amended to read as follows:

"4-4-107. Proximity to churches and schools restricted. *A retail licensee may not extend or relocate his premises within six hundred (600) feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, or as a school other than a commercially operated or post-secondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority. However, the department may renew a license for any establishment located in violation of this section if the establishment was either located on the site before the place of worship or school opened, or located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937."*

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Section 93. Section 4-416, R.C.M. 1947, is renumbered 4-2-204, and is amended to read as follows:

"**4-2-204. Department to sell to licensees — posted price.** The *department* is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this *code* at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the *department of revenue* and in addition thereto an excise tax as in this act provided."

Section 94. Section 4-417, R.C.M. 1947, is renumbered 4-1-403, and is amended to read as follows:

"**4-1-403. Excise liquor tax — collection.** The *department of revenue* is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of sixteen per centum (16%) of the retail selling price on all liquor so sold and delivered. The Montana *department of revenue* shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month."

Section 95. Section 4-418, R.C.M. 1947, is renumbered 4-2-205, and is amended to read as follows:

"**4-2-205. Duplicate invoices of sales required.** The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by *the department*, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the *department*. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the *department*."

Section 96. Section 4-419, R.C.M. 1947, is renumbered 4-6-102, and is amended to read as follows:

"**4-6-102. Sale of liquor not purchased from state store forbidden — penalty.** It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the state liquor store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a state liquor store, shall, upon conviction, be fined not less than five hundred dollars *($500)* nor more than fifteen hundred dollars *($1500)*, or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the *department* shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents,

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servants or employees, it shall be mandatory that said *department* immediately revoke the license of said licensee."

Section 97. Section 4-420, R.C.M. 1947, is renumbered 4-4-407, and is amended to read as follows:

"**4-4-407. Penalty for sale of alcoholic beverage without license.** Any person, who has not been issued a license under this *code*, who shall sell or keep for sale any alcoholic *beverage*, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars *($1000)* nor more than five thousand dollars *($5,000)*, or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment."

Section 98. Section 4-421, R.C.M. 1947, is renumbered 4-3-307, and is amended to read as follows:

"**4-3-307. Sale of liquor at less than posted price forbidden.** It shall be unlawful for any licensee under the provisions of this *code* to resell any liquor purchased by such licensee from a state liquor store *or the state of Montana* for a sum less than the posted price established by the said store and paid by the licensee therefor."

Section 99. Section 4-422, R.C.M. 1947, is renumbered 4-1-305, and is amended to read as follows:

"**4-1-305. Employees of liquor division not to deal in liquor.** No member or employee of the *liquor division of the department*, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, shareholder or otherwise, whether for his own benefit or in a fiduciary capacity for others."

Section 100. Section 4-423, R.C.M. 1947, is renumbered 4-6-206, and is amended to read as follows:

"**4-6-206. Officers may seize illicit alcoholic beverages — forfeiture.** Any sheriff, police officer, or *investigator* appointed under this *code*, who shall find any alcoholic *beverage* kept or held by any person for sale or other disposition in violation of this *code*, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the *alcoholic beverage* and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed."

Section 101. Section 4-428, R.C.M. 1947, is renumbered 4-6-204, and is amended to read as follows:

"**4-6-204. Officers may examine premises.** The *department of revenue* or any duly authorized representative thereof, or the sheriff of any county, shall have the right at any time to make an examination of the premises of *a retail* licensee as to whether the law of Montana and the rules and regulations of the *department* are being complied with, and shall also have a right to inspect cars *or aircraft* of any *common carrier* system licensed under *this code*."

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Section 102. Section 4-429, R.C.M. 1947, is renumbered 4-4-405, and is amended to read as follows:

"**4-4-405. Renewal of suspended licenses.** After suspension or revocation of a license the *department* shall have the power to renew the same if in its discretion a proper showing therefor has been made."

Section 103. Section 4-430, R.C.M. 1947, is renumbered 4-4-406, and is amended to read as follows:

"**4-4-406. City and county licenses — fees.** The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a *retail* license has been issued under the provisions of this *code*, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the *department* from such licensee under this *code*."

Section 104. Section 4-439, R.C.M. 1947, is renumbered 4-6-404, and is amended to read as follows:

"**4-6-404. Penalty for violating act — revocation of license.** Any person violating any of the provisions of this *code*, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided *in section 95-2206.3, R.C.M. 1947*, except as is herein otherwise provided. If any *retail* licensee is convicted of any offense under this *code* his license shall be immediately revoked, or in the discretion of the *department such other sanction imposed as may be authorized under section 4-4-402.* Further, if any person under the age of eighteen (18) is convicted of an offense under this *code* he shall be subject to a one hundred dollar ($100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this *code* that all licensees display in a prominent place in his premises a placard as issued by the *department* stating fully the consequences for violations by persons under the age of eighteen (18) years of the provisions of this *code.*

Any person who invites a person under the age of eighteen (18) years into a public place where *an alcoholic beverage* is sold and treats, gives or purchases *an alcoholic beverage* for such person, or permits such person in a public place where *an alcoholic beverage* is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of eighteen (18) years to the owner of the establishment, or his or her employee or employees, shall be guilty of a misdemeanor."

Section 105. Section 4-440, R.C.M. 1947, is renumbered 4-1-106, and is amended to read as follows:

"**4-1-106. Saving clause — scope of code.** If any clause, sentence, paragraph, section or any part of this *code* shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this *code.* This *code* shall apply to the Montana *department of revenue* as now composed and existing, and to any board or commission *or other entity* which may hereafter succeed the *department.*"

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Section 106. Section 4-507, R.C.M. 1947, is renumbered 4-5-102, and is amended to read as follows:

"**4-5-102. Duties of the county clerk and recorder.** Upon making application to the county clerk and recorder for an identification card, the applicant must apply in person before the county clerk and recorder, who shall ascertain and receive from the applicant:

1. The true and full name of the applicant;

2. The date of birth of the applicant, provided, however, it shall be within the discretion of the officer to require proof of the date of birth with a certified copy of his or her birth certificate;

3. Place of birth of the applicant;

4. The height and weight of the applicant;

5. The color of eyes and hair of the applicant; and

6. *Two,* one and one-quarter inch (1¼") by one and one-half inch (1½") photograph of the applicant which shall bear a true resemblance to the applicant. It shall be within the discretion of the clerk and recorder to refuse a photograph which does not present a true resemblance of the applicant. *The second photograph is to be filed with the state."*

Section 107. Section 4-508, R.C.M. 1947, is renumbered 4-5-103, and is amended to read as follows:

"**4-5-103. County clerk and recorder to forward application to the Montana department of revenue for issuance of identification card.** The county clerk and recorder shall forward the application, properly filled in and authenticated, to the Montana *department of revenue,* and that *department* shall prepare an identification card upon a laminating machine. The identification card shall set forth all the information contained in the application, together with the photograph, and shall be signed by the *director of* the Montana *department of revenue* or his designee."

Section 108. Section 4-509, R.C.M. 1947, is renumbered 4-5-104, and is amended to read as follows:

"**4-5-104. Montana department of revenue to furnish application forms to county clerk and recorders.** It shall be the duty of the Montana *department of revenue* to prepare suitable application blanks and cause the same to be distributed to the various county clerk and recorders."

Section 109. Section 4-510, R.C.M. 1947, is renumbered 4-5-105, and is amended to read as follows:

"**4-5-105. Fee to be charged.** The county clerk and recorders shall charge and collect a fee of one dollar *and fifty cents ($1.50)* from the applicant at the time the application is prepared. *One dollar ($1) thereof* shall be transmitted to the Montana *department of revenue* along with the application and shall be used to defray the cost of administering and executing the provisions of this *code.* Any surplus shall revert to the gen-

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eral fund of the state of Montana. *The remaining fifty cents ($.50) shall be paid into the general fund of the county to defray the county's costs in administering this program.*"

Section 110. There is a new R.C.M. section numbered 4-1-107, that reads as follows:

4-1-107. Definitions. As used in this code:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant, rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than one-half of one percent (0.5%) of alcohol by volume.

(4) "Beer" means a malt beverage containing not more then seven percent (7%) of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the Montana department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the Federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Proof gallon" means a U. S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

(13) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(14) "Residence" means a building, part of a building, or tent where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

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(15) "Rules and regulations" means rules and regulations published by the department pursuant to this act.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines.

(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer as permitted by this code.

(20) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven percent (7%) nor more than twenty-four percent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

Section 111. There is a new R.C.M. section numbered 4-1-204, that reads as follows:

4-1-204. Health professions exemption. A physician, dentist, veterinarian or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol, and sells or charges a fee, does not violate the prohibitions of this title.

Section 112. There is a new R.C.M. section numbered 4-1-206, that reads as follows:

4-1-206. Local option. The electors of a county may, by approving an initiative as provided under Title 37, chapter 3, R.C.M. 1947, prohibit the sale and consumption of liquor, or of all alcoholic beverages, within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under section 37-301.

Section 113. There is a new R.C.M. section numbered 4-1-405, that reads as follows:

4-1-405. In addition to the annual license tax imposed by section 4-4-401, a tax of three dollars ($3) per barrel of thirty-one (31) gallons

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is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the department under the provisions of section 4-3-203.

Section 114. There is a new R.C.M. section numbered 4-4-109, that reads as follows:

4-4-109. Passenger carrier licenses. Common carriers serving Montana may serve beer and liquor to passengers in aircraft over or railroad cars in the state of Montana, upon the issuance by the department of revenue of a retail beer and liquor license for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor, and shall be effective from July 1 of the current year to July 1 of the following year. They shall be issued upon payment by the applicant of an annual license fee in the sum of three hundred dollars ($300); provided, that licenses shall be issued for the remainder of the fiscal year commencing July 1, 1968, upon payment of a license fee in the sum of one hundred fifty dollars ($150).

Section 115. There is a new R.C.M. section numbered 4-4-110, that reads as follows:

4-4-110. Payment of liquor taxes by passenger carriers. Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the Montana department of revenue the excise taxes and state markup which would be applicable to such liquor if purchased from the state liquor store.

The amount of such excise taxes and state markup payable shall be determined by multiplying the following factors:

(a) the average liquor used per departure;

(b) the number of departures from Montana on which liquor is served;

(c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and

(d) the applicable excise tax and state markup rates.

From said product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

Section 116. There is a new R.C.M. section numbered 4-4-111, that reads as follows:

4-4-111. Other accounting methods — forms. (1) The method provided in section 4-4-110 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption with this state. Any carrier aggrieved by the application of such method may petition the department for use of some other method. Thereupon, if the department finds that the application of such method will be unjust to the carrier, it may allow the use of the method so petitioned for by the airline or may use such other method as will fairly reflect the liquor purchased outside this state and served for consumption within this state.

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(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

Section 117. There is a new R.C.M. section numbered 4-3-308, that reads as follows:

4-3-308. Refilling of liquor bottles prohibited. No person who sells, or offers for sale, liquor, nor the agent or employee of such person, may—

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

Section 118. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"**41-2004. Definition of terms.** For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means any *beverage so defined in the Alcoholic Beverages Code.*

(6) "Beer" means any beverage *so defined in the Alcoholic Beverages Code.*

(7) "Employee" means a person who works for wages or salary in the service of an employer.

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(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

Section 119. Section 4-404, R.C.M. 1947, is renumbered 4-4-403, and is amended to read as follows:

"4-4-403. License fee for retail sale of liquor within and without cities and towns of designated populations — census of population. Each licensee licensed under *the quotas of section 4-4-202* shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), *four* hundred dollars *($400)* per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred ($300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *five* hundred dollars *($500)* per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, *measured* in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *six* hundred fifty dollars *($650)* per annum;

(d) For each license in incorporated cities with a population of ten thousand (10,000) or more, or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, *eight* hundred dollars *($800)* per annum;

(e) For each railway system in the state of Montana, three hundred ($300.00) dollars per annum;

(f) The distance of five (5) miles from the corporate limits of any incorporated cities and incorporated towns shall be measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within five (5) miles of the corporate boundaries of two (2) or more incorporated cities or incorporated towns of different populations the license chargeable by the larger incorporated city or incorporated town shall apply and be paid by the applicant; provided, however, that when the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of said incorporated town or incorporated city be without said five (5) mile limit then the license fee chargeable by the smaller incorporated town or incorporated city shall apply and be paid by said applicant.

An applicant for the issuance of an original license to be located in areas described in subsection (d) of this section shall pay a one-time original

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license fee of twenty thousand dollars ($20,000) for any such license issued. The said one-time license fee of twenty thousand dollars ($20,000) shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, shall be subject to the annual renewal fee of *eight* hundred dollars *($800).*

The license fees herein provided for are exclusive of and in addition to other license fees chargeable in the state of Montana for the sale of liquor, beer and malt beverages.

The census taken under the direction of Congress of the United States in the year nineteen hundred and thirty, and every ten years thereafter, shall be the basis upon which the respective populations of said municipalities shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis, provided, however, that no census hereafter taken shall be such basis until it shall have been published under the authority under which the same shall be taken, and then its effect shall from the date of such publication be prospective only and provided, further, that none of the provisions of this act shall be deemed to operate retroactively."

Section 120. The following sections of the Revised Codes of Montana 1947 are renumbered as follows: 4-114.1 is renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-169 is renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209; 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered 4-3-303; 4-403.1 is renumbered 4-4-205; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered 4-5-101; 4-512 is renumbered 4-5-106.

Section 121. Sections 4-102, 4-104, 4-105, 4-106, 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137, 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148, 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203, 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230, 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305, 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345, 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402, 4-405, 4-409, 4-414, 4-424, 4-425, 4-431, 4-432, 4-433, 4-434, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502, 4-503, 4-504, 4-505, 4-513, and 4-514, R.C.M. 1947, are repealed.

Approved April 12, 1975.

CHAPTER NO. 388

AN ACT TO CHANGE THE TIME OF ASSESSMENT OF PROPERTY FROM THE FIRST MONDAY IN MARCH TO THE FIRST DAY OF JANUARY BY AMENDING SECTIONS 7-122, 16-4019, 53-639.1,

46-2704, 46-2804, 46-2809, 81-928, 84-406, 84-409, 84-410, 84-510, 84-3808, 84-3809, 84-4192, 84-4209, 84-4604, 84-4605, 84-4606, 84-5801, 84-6012, 84-6013, 89-1805, AND 89-1806, R.C.M. 1947, AND CHANGING THE TIME FOR WITHDRAWAL FROM A PUBLIC HOSPITAL DISTRICT AND FOR CHANGING BOUNDARIES OF AN ELEMENTARY SCHOOL DISTRICT TO COINCIDE WITH THE JANUARY 1 ASSESSMENT DATE BY AMENDING SECTIONS 16-4311 AND 75-6505, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-122, R.C.M. 1947, is amended to read as follows:

"**7-122. Taxation of associations.** Every association shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of such associations, the amount standing to the credit of the members of any such association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of every such association shall furnish to the department of revenue or its agent in the county in which the principal office of such association is located, within five (5) days after demand therefor, a condensed statement verified by his oath, of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first *day of January* in each year; if such secretary shall fail to make the statement hereby required, the department or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or the department or its agent may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascer-

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tained by deducting the loan from the cash value of the shares. Associations organized under or controlled by this act shall be subject to taxation in no other way."

Section 2. Section 16-4019, R.C.M. 1947, is amended to read as follows:

"**16-4019. Assessment of property.** The county assessor of a county abandoned and abolished under the provisions of this act shall, within ten (10) days after it comes to exist deliver to the county assessor of each county to which any part of its territory had been attached and become a part of all assessment lists, reports, documents and instruments relating to, concerning, or in any way affecting the assessment during the then current assessment year of all taxable property within such portion of such abandoned and abolished county, and it shall be the duty of the assessor of the county, to whom such assessment lists, reports, documents and instruments have been delivered by the assessor of the abandoned and abolished county, to complete all assessments and to fully assess, during the then current assessment year, all taxable property situated or located, on the first *day of January* of such year, within the boundaries of such part of such abandoned and abolished county, and each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished county would, or could have had, possessed, exercised or performed if such county had not been abandoned and abolished. The county assessor of such abandoned and abolished county shall, until twelve (12:00) o'clock midnight of the thirtieth day of June when said county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory so to be abandoned and abolished will be attached and made a part, in the listing and assessing of all taxable property situated or located within each of such counties to the end that all taxable property within the boundaries of such abandoned county will be fully assessed and taxed."

Section 3. Section 53-639.1, R.C.M. 1947, is amended to read as follows:

"**53-639.1. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — application — fee — publicly owned special mobile equipment.** (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, is not subject to registration of that equipment or required to pay the fees and charges provided for in chapters 32 through 35 of Title 32. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealers' license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of five dollars ($5). The equipment

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for which a special mobile equipment plate is sought, is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on *December* 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from this section."

Section 4. Section 46-2704, R.C.M. 1947, is amended to read as follows:

"**46-2704. Tax levy — special fund.** Said county livestock protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the county on the first *day of January* and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited by the county treasurer in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act."

Section 5. Section 46-2804, R.C.M. 1947, is amended to read as follows:

"**46-2804. Tax levy — deposit of proceeds.** Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first *day of January* and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act."

Section 6. Section 46-2809, R.C.M. 1947, is amended to read as follows:

"**46-2809. Tax levy — deposit of proceeds.** Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first *day of January* and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act."

Section 7. Section 81-928, R.C.M. 1947, is amended to read as follows:

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"**81-928. Land subject to taxation.** (1) State lands purchased from the state are subject to taxation to the full value thereof. The department of revenue shall assess the purchaser for the full value of the land on the first *day of January* following the date of purchase. The holder of certificates of purchase to lands within irrigation districts is liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before *January* 15 of each year, the department shall furnish the department of revenue or its agent in each county with a complete list of all state lands sold in his county during the year ending on *the previous December 31.* This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein."

Section 8. Section 84-406, R.C.M. 1947, is amended to read as follows:

"**84-406. Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles.** (1) The department of revenue or its agent must, between the first *day of January* and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first *day of January* next preceding. It must also ascertain and assess all mobile homes arriving in *the* county after 12 midnight of the first *day of January* next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock being fed in feeding pens or enclosures which may *by* subdivision (3) of this section be assessed on an average inventory basis. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" *which is* subject to assessment of personal property taxes on the date that application is made for a special mobile equipment plate.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles and campers which are required by subdivision 4 hereof to be assessed as of the first day of January.

(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle

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was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at full and true value as of the first *day of January.*

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first *day of January* may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The department of revenue or its agent must ascertain and assess all snowmobiles and campers in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile or camper was, *including dealers,* at 12 *midnight* of the first day of January in each year."

Section 9. Section 84-409, R.C.M. 1947, is amended to read as follows:

"**84-409. Statement — what to contain.** The department of revenue or its agent must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock *midnight* on the first *day in January.* Such statement must be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession, or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession, or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession, or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated.

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5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres which have been sectionized by the United States government; improvements, and personal property, including all vessels, steamers, and other watercraft, and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent.

Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included.

7. All depots, shops, stations, buildings, and other structures erected on the space covered by the right of way, and all other property owned by any person, corporation, or association of persons, owning or operating any railroad within the county.

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation."

Section 10. Section 84-410, R.C.M. 1947, is amended to read as follows:

"**84-410. Department of revenue to furnish blanks, etc.** The department of revenue must furnish its agents with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I,...., do swear that I am a resident of the county of ....(naming it), and that my post-office address is ....; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock *midnight* on the first *day of January* last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time

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when taxes become delinquent, and the time of the meeting of the county tax appeal board, must be stated in such form."

Section 11. Section 84-510, R.C.M. 1947, is amended to read as follows:

"**84-510. List of lands sold by state to be transmitted by state land agent.** On or before the first *day of January* in each year, the state land agent must make out and transmit to the department of revenue where lands or lots lie that have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof."

Section 12. Section 84-3808, R.C.M. 1947, is amended to read as follows:

"**84-3808. Tax on personal property lien on realty — separate assessment.** (a). Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof, from and after 12 *midnight* of the first *day of January* in each year.

(b). The taxes upon personal property based upon a taxable value up to and including one thousand dollars (*$1000*) shall be a first and prior lien upon the real property of the owner of such personal property; taxes upon personal property based upon the taxable value thereof in excess of one thousand dollars (*$1000*) shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and ex officio recorder of the county where such real property is situated at or before the time such personal property tax attached thereto shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of one thousand dollars (*$1000*), of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including one thousand dollars (*$1000*); and personal property taxes upon a taxable value up to one thousand dollars (*$1000*) may be paid, redeemed from a tax sale as by law provided, or discharged separate from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to one thousand dollars (*$1000*) as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(c). The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving;

(1) the name and address of the mortgagee and holder of the mortgage or lien;

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(2) the name of the reputed owner of the land;

(3) the description of the land;

(4) the date of record and expiration of the mortgage or lien;

(5) the amount thereof; and

(6) a statement that he claims the benefit of the provisions of this section; and such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually, unless the mortgage be extended for a definite period to be stated in such notice.

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first *day of January* in the year for which property is assessed. Upon receipt by the department of revenue or its agent of such request, it is hereby made the duty of the department of revenue or its agent to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property."

Section 13. Section 84-3809, R.C.M. 1947, is amended to read as follows:

"**84-3809. Tax upon real property and tax on improvements a lien upon both.** Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate is a lien upon the land and improvements; which several liens attach as of the first *day of January* in each year."

Section 14. Section 84-4192, R.C.M. 1947, is amended to read as follows:

"**84-4192. Land subject to taxation to purchaser — when.** On the first *day of January* following the execution of such contracts or deed the land shall be subject to taxation in the name of the purchaser or his assignee and in the event the taxes are not paid and the same become delinquent said contract shall be subject to cancellation and all payments theretofore made shall be taken, treated, and regarded as rent for said property."

Section 15. Section 84-4209, R.C.M. 1947, is amended to read as follows:

"**84-4209. Rate of taxation where property is taxable.** All rates of

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tax levy set by the board of county commissioners on the second Monday in August of each year, shall apply permanently to this class of personal property during the ensuing year, and the treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge. Personal property which was in the state and subject to taxation on the first *day of January* of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming or possessing it on the first *day of January* or not; provided, that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes; provided further, that if the rate of taxation fixed for the year in which the collection is made is an increase over the preceding year's levy, then the said board of county commissioners may direct the county treasurer to collect the amount of such increased levy, but shall not be obliged to do so in cases where, in the opinion of the board, the cost of collection would exceed the amount of such increase, and provided further that if the rate fixed for the year in which the collection is made shall be less than the levy for the preceding year, then the person from whom such excess tax was collected may file with the board of county commissioners a duly verified claim for a refund of such excess tax, at any time before the first day of November of the year in which such an excess was collected, and such claim shall be allowed and ordered paid by the board of county commissioners to the amount of such excess."

Section 16. Section 84-4604, R.C.M. 1947, is amended to read as follows:

"**84-4604. Statements to be furnished by officers.** The cashier of every national bank shall make and deliver to the department of revenue or its agent in the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business *on December 31* each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be assessed. If said cashier fails to make such statement as required, the department of revenue or its agent shall forthwith obtain said information from the officers of the bank and for this purpose shall have access to the books of the bank, and the department or its agent shall therefor make an assessment of such stock, which shall be as fair and equitable as can be made from the best information available, or the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports, may be adopted."

Section 17. Section 84-4605, R.C.M. 1947, is amended to read as follows:

"**84-4605. Taxation of banks and shares of stock in.** (1) Every state bank or banking corporation located and doing business in this state, and every private banker doing business in this state, shall be taxable upon the value of all real estate and personal property owned by such bank,

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banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by section 84-301; and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the department of revenue or its agent in the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at *the close of business on December 31 of the preceding* year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the department or its agent shall forthwith obtain such information from any other available source, and for this purpose shall have access to the books of such bank, banking corporation or private banker. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as can be made from the best information available or, for the purpose of said assessment the figures disclosed by any prior report made by such bank, banking corporation or private banker to any state or federal officer pursuant to any state or federal law may be adopted. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

(2) All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is assessable and taxable to such bank or banking corporation in this state, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place.

(3) The cashier or secretary of any such bank or banking corporation shall furnish to the department or its agent, upon demand, the name of each stockholder with his residence and the number of shares belonging to him at *the close of business on December 31 of the preceding* year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the department or its agent may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided

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that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon."

Section 18. Section 84-4606, R.C.M. 1947, is amended to read as follows:

"**84-4606. Banks with offices in more than one county — assessment and apportionment of tax.** Any state or national bank, banking corporation, or private bank, the stock, moneyed capital, or moneys and credits of which are subject to taxation under the provisions of chapter 3 and chapter 46, Title 84, Revised Codes of Montana, 1947, and which has banking offices in more than one (1) county, shall furnish to the department of revenue or its agent in each such county the information required of it by chapter 46, Title 84, Revised Codes of Montana, 1947, together with a statement of the book value of real estate owned and located in the respective counties and a statement of the deposit liability shown by the books of account of said bank at each of its said banking offices at the close of business *on December 31 of the preceding year*; and the aggregate tax on the stock, moneyed capital, and moneys and credits of such bank computed as provided by law shall be assessed by and be paid to the respective counties in the proportion which the amount of the deposit liability shown on the books of the office or offices of such bank located in such counties, respectively, shall bear to the total deposit liability of such bank."

Section 19. Section 84-5801, R.C.M. 1947, is amended to read as follows:

"**84-5801. Production credit associations — assessment and payment.** Every production credit association organized under the provisions of section 1131d of title 12, United States Codes annotated shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of loans, including loans secured by mortgage on real estate or personal property, the amount of such loans discounted, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith.

The secretary or managing agent of every such association shall furnish to the assessor of the county in which the principal office of such association is located, within five (5) days after demand therefor, a statement in such detail as the department of revenue or its agent may require, verified by his oath of the resources and liabilities of such association as disclosed by its books, at *the close of business on December 31 of the preceding* year. If such secretary or managing agent shall fail to make the statement hereby required, the department of revenue or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department of revenue or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the

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moneyed capital employed in the business of such association which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly."

Section 20. Section 84-6012, R.C.M. 1947, is amended to read as follows:

"**84-6012. Livestock brought into state — notice to department of revenue or its agent.** The owner or the agent, manager or foreman of any person, corporation, or association bringing livestock into this state after the first *day of January* shall immediately after said livestock crosses the state line, forward to the department of revenue or its agent in the county into which the livestock is moved, a registered letter, which letter shall contain the name of the owner of such livestock, of the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided, that the *department of* livestock at least once each month furnish, from own records to the department of revenue or its agent in the county into which such livestock is moved, a list of the number and kind of livestock so moved, together with the name of the owner thereof."

Section 21. Section 84-6013, R.C.M. 1947, is amended to read as follows:

"**84-6013. Collection of tax on livestock.** The department of revenue or its agent upon receipt of such letter or other information, that livestock has been brought into his county from outside of the state, after the first *day of January* in any year, shall immediately proceed under the provisions of section 84-4201."

Section 22. Section 89-1805, R.C.M. 1947, is amended to read as follows:

"**89-1805. Determination of irrigable area.** (1) For the purpose of determining the number of acres of irrigable lands in each forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in the district, the board of commissioners of any irrigation district organized hereunder, whenever deemed advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of said lands to be made, as well as a specific examination of the character of the soil of each such tract. Upon completion of such survey and maps, and examination, the board shall give notice that at a meeting of said board, to be held at the office of the board on a day to be fixed in said notice, said board will determine the irrigable area of each such tract of land in the district and that it will hear and consider any objection on the part of any landowner in the district to such determination and to adjustment of the irrigable area of

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said district or of any lands within any tract or subdivision thereof. It shall not be necessary to describe said tracts in said notice. Such notice shall be given by publication, once a week for two successive calendar weeks, in a newspaper of general circulation in the county where the office of the board is located, and where lands of any irrigation district lie in more than one county, such notice shall also be published in a newspaper or newspapers of general circulation in each such county. The last publication of said notice shall be at least five days prior to the date fixed for said meeting.

(2) At such meeting, the board shall proceed to determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district, and shall hear all persons interested who may appear, and shall continue in session from day to day (exclusive of Sundays and legal holidays) as long as may be necessary and until said determination of irrigable area shall have been completed. The board shall hear all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon such determination, the irrigable area so fixed shall become, and thereafter be, the acreage upon which any special tax or assessment shall be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in said district shall pay; and any special tax or assessment levied for any purpose shall be a lien upon the entire forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in the district of which said irrigable area forms a part, and said lien shall attach to said entire tract as of the first *day of January* in the year in which said special tax or assessment is levied.

(3) Upon completing such determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each such tract or subdivision, and shall cause to be prepared a list of all lands in said district, which list shall contain an accurate description of each such forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in said district, the total acreage and the number of irrigable acres therein as so fixed and determined, and the name of the owner, or holder of title or evidence of title thereof, ascertained as provided in section 89-1201. Such list, when completed and adopted, shall be filed in the office of the board of commissioners and shall remain there for public inspection. A certified copy of such resolution and list shall be filed with the county clerk and recorder of each county in which any portion of the lands in said district are situated; provided, however, there shall be omitted from such copy lands not situated in the county in which such copy is filed.

(4) No special tax or assessment shall be levied against any forty-acre tract, or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where lands shall be owned in less than forty-acre tracts or in less than the platted lot, then

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against each such tract) found by said board to contain no irrigable land; nor shall any lien created after the order of determination herein provided for attach to any such tract, nor shall the owner, or owners, of any tract or tracts have any vote or votes in any proceeding or election under the provisions of Chapter 146 of the Laws of 1909, or any amendment thereof, or act supplementary thereto, after the making of such order, unless his said land, or a portion thereof, be found by said board to contain an area irrigable from the works, or proposed works, of said district.

(5) Upon the determination provided for in this section, the board of commissioners shall have the power to refund any taxes paid, or cancel any unpaid taxes or assessments, levied upon an acreage in excess of that so fixed by said order of determination, and where necessary, may issue warrants therefor.

(6) Within sixty days after such resolution adopting said list, the board of commissioners may petition the district court for confirmation of their acts in determining the irrigable area, as aforesaid, and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in said district, ascertained as in this act provided, may, likewise, within such sixty-day period, petition the district court for review of the actions of the board of commissioners. But one of such proceedings, if prosecuted to determination, shall be exclusive of the other. Upon such proceeding, the court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court, or taxes previously levied upon any area shown to be excessive, to be refunded or canceled.

(7) The provisions of section 89-1402, regarding the procedure as well as the right and time to appeal, shall apply to any proceeding instituted in pursuance of the provisions of this section; provided, however, that nothing in this section shall be deemed or construed to affect or impair the lien of any bonds issued by the district; and provided, further, that if confirmation proceedings are held and a certified copy of the order of confirmation be filed with the county clerk and recorder of the county in which any portion of said lands is situated, it shall not be necessary to file in said office the certified copy of the resolution and order of the board, or of the list, hereinabove provided for.

(8) Provided, however, that where districts have been established in order to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress, which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of construction works, or for the assumption as principal or guarantor, of indebtedness to the United States on account of district laws, the determination of the irrigable area of the lands in said district may be made by the said board of commissioners in the manner in this section provided or by the United States at the option of the latter, and, if the United States determines the irrigable area, the proceeding for the apportionment and distribution of the costs of the proposed works or improvements, hereinafter provided for in section 89-1806 shall not be had."

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Section 23. Section 89-1806, R.C.M. 1947, is amended to read as follows:

"**89-1806. Determination of irrigable area — apportionment and distribution of costs of proposed works or improvements.** (1) Whenever a petition for the issuance of bonds of any irrigation district organized hereunder shall have been filed, as hereinbefore in section 89-1703 provided, the board of commissioners of such district shall examine, or cause to be examined, each forty-acre tract or fractional lot as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than forty-acre tracts or in less than the platted lot, then against each such tract) of land in said district, and cause a careful topographical survey and map to be made, in the manner provided for in section 89-1805. Upon such examination, the board shall determine the number of irrigable acres in each such tract; and shall apportion and distribute the cost of the works or improvements for which said bonds are to be issued, over the tracts within said district according to the irrigable area in each of said tracts or subdivisions, so that each such irrigable acre shall be required to bear the same burden of such costs as each other irrigable acre in said district, and the special tax or assessment levied to meet the principal of and interest on said bonds so authorized, shall become a lien upon the entire tract of which such irrigable area forms a part or portion as of the first *day of January* of the year in which such special tax or assessment is levied, and the number of irrigable acres in each such tract as so determined shall not be diminished but may be increased during the term for which any such bonds may be issued or until the bonds shall be liquidated in full.

(2) Provided, however, that if a proceeding for the determination, in whole or in part, of the irrigable area of the lands in said district has already been had, or a topographical survey or maps thereof prepared, or a court confirmation of said prior proceedings had, in part or in full, the said board may, in its discretion, adopt all or such portions of said prior proceedings; and in such an event, it shall not be necessary to cause an additional survey, or maps, or examination, of any of such tracts to be again made, or to redetermine the irrigable area of any such tract.

(3) The board shall make such determination after hearing had and shall fix the total acreage and the irrigable acreage, and shall cause a list of such irrigable area to be made and filed and the proceedings of the board in connection with such determination, including said hearing and notice of said hearing, and order or resolution fixing the irrigable area and the preparation and filing of said list, shall conform to the requirements set forth in section 89-1805. At such hearing, the said board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of said authorized bond issue, and any tax levied for such purposes shall be a lien upon the entire tract of which said irrigable area forms a part. If any landowner in the district shall appear before the board at said time and pay in cash the amount fixed against his said land as its proportion of the amount found necessary for the purposes for which said bonds were authorized and are to be issued, his land shall be excluded

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from the lien of the bond issue and the amount of bonds intended to be issued shall be reduced by the amount of such payment. Any person interested who shall fail to appear before the board at said meeting shall not thereafter be permitted to contest the proceedings of said board, or any part thereof, except upon special application to the court in the proceedings for the confirmation of said bonds and a showing of reasonable excuse for failure to appear before said board of commissioners.

(4) In case any such landowner makes objection to the proceedings of said board in determining the irrigable area in his own or any other tract of land, or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district for the purposes of the proposed bond issue, and said objection is overruled by the board, such objection without further proceedings shall be regarded as appealed to the district court, and shall, with the other proceedings of said board at said meeting, be heard at the proceedings to confirm said bonds, as provided in section 89-1704, and when so confirmed, said order overruling such objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement thereto, shall become final, binding and conclusive upon said landowner and upon the district, unless appealed from as in said section 89-1704 provided.

(5) Provided, however, that whenever the irrigable area of the lands in any irrigation district shall have been determined and confirmed, no owner or holder of title or evidence of title to lands in said district, during the period of any bonds thereafter authorized shall be issued and outstanding, shall have the taxable acreage of his said lands fixed or adjudicated in the manner provided by sections 89-1404 to 89-1408, in such manner or to such extent as to reduce the acreage subject to the payment of such bonds or interest thereon, or in such manner as to affect the security of such bonds or interest thereon."

Section 24. Section 16-4311, R.C.M. 1947, is amended to read as follows:

"**16-4311. Withdrawal of portion of district, petition for.** Any portion of a public hospital district may be withdrawn therefrom as in this section provided, upon receipt of a petition signed by fifty-one per centum (51%) of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before *December 31 of the preceding* year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Any withdrawal shall be effective as of *January* 1 following the issuance of the withdrawal

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order. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal, to the same extent as it would have been subject if not withdrawn."

Section 25. Section 75-6505, R.C.M. 1947, is amended to read as follows:

"75-6505. Time limitation for district boundary changes. No elementary district shall be created nor shall any elementary district boundaries be changed between the first day of *January* and the second Monday of August of any calendar year except when:

(1) the entire territory of a district is annexed or attached to another district;

(2) the entire territory of the portion of a joint district located in one (1) county is annexed or attached to another district; or

(3) two (2) or more districts are consolidated in their entirety."

Approved April 12, 1975.

CHAPTER NO. 389

AN ACT TO AMEND SECTION 37-301, R.C.M. 1947, TO PROVIDE FOR PROMPT JUDICIAL REVIEW OF RESOLUTIONS PROPOSED BY POPULAR INITIATIVE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-301, R.C.M. 1947, is amended to read as follows:

"37-301. Petition to initiate county resolution — adoption by board — submission to people — waiting period before re-enactment of resolution repealed by people. (1) Resolutions may be proposed by the legal voters of any county in this state, in the manner provided in this act. Fifteen percent (15%) of the legal voters of any county may propose to the board of county commissioners a resolution on a subject within the legislative jurisdiction and powers of such county commissioners, or a resolution amending or repealing any prior resolution or resolutions. Petitions shall be filed with the county clerk. The county clerk shall present the same to the board at its first meeting next following the filing of the petition. The board may, within sixty (60) days after the presentation of the petition to the board, adopt the resolution as set forth in the petition. If the resolution proposed by the petition is passed without change, it shall not be submitted to the people, unless a petition for referendum demanding such submission is filed under the provisions of this act.

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(2) If the board does not, within sixty (60) days, pass the resolution proposed in the petition, then the resolution proposed by the petition shall be submitted to the people. Before submitting such resolution to the people, the board may direct that a suit be brought in the district court in and for the county to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. *If the board determines that a suit must be brought, the suit shall be filed within fifteen (15) days after presentation of the petition to the board.* The procedure for judicial review shall be the same as that provided for the cities in section 11-1104 (4) and (5).

(3) If a resolution is repealed pursuant to a proposal initiated by the qualified electors of a county as provided in this act, the board of commissioners may not, within a period of two (2) years thereafter, re-enact such resolution or any resolution so similar thereto as not to be materially different therefrom. If during such two (2) year period the board enacts a resolution similar to the one repealed pursuant to initiative of the voters, a suit may be brought to determine whether the new resolution is a re-enactment without material change of the one so repealed. The same procedures set forth for cities shall apply to such suit and determination of the issues arising thereon. Nothing herein contained shall prevent exercise of the initiative herein provided for, at any time, to procure a re-enactment of a resolution repealed pursuant to initiative of the voters."

Approved April 12, 1975.

CHAPTER NO. 390

AN ACT AMENDING SECTION 53-106, R.C.M. 1947, RELATING TO MOTOR VEHICLE LICENSE PLATES BY PROVIDING THAT MOTOR VEHICLE NUMBER PLATES SHALL BE ISSUED FOR A MINIMUM PERIOD OF FOUR YEARS AND THAT THOSE ISSUED IN 1976 SHALL BE A GRAPHIC DESIGN COMMEMORATING THE BICENTENNIAL CELEBRATION OF THE FOUNDING OF THE UNITED STATES OF AMERICA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-106, R.C.M. 1947, is amended to read as follows:

"**53-106. Number plates.** (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including

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trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semi-trailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued *for a minimum period of four years*, provided that number plates *shall* next be issued in the year *1976* and *as often* thereafter *as is consistent with the provisions of this section,* shall bear a distinctive marking, and shall be furnished by the state. In years *when number plates are not issued,* the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars *and trucks*, number plates shall be of metal six inches wide and twelve inches in length, *the number plates issued in the year 1976 to be of a graphic design commemorating the bicentennial of the founding of the United States of America, and the word "Montana" with the year placed on the plate. For number plates issued after 1976,* the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a *separation mark* unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar

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of motor vehicles at such time when the physical condition of numbered plates requires same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrailers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57."

Approved April 12, 1975.

CHAPTER NO. 391

AN ACT TO EXEMPT THE EMPLOYEES AND STAFF OF THE SCHOOL FOR THE DEAF AND BLIND FROM THE CLASSIFICATION AND COMPENSATION PLAN; AMENDING SECTION 59-904, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-904, R.C.M. 1947, is amended to read as follows:

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"**59-904. Officers and employees excepted from provisions of act.** This act does not apply to the following positions in state government:

(1) elected officials and their chief deputy and executive secretary;

(2) officers and employees of the legislative branch;

(3) judges and employees of the judicial branch;

(4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;

(5) officers or members of the militia;

(6) agency heads appointed by the governor;

(7) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(8) *academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;*

(9) personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from sections 59-909, 59-910, and 59-911 of this act, and section 82A-1014."

Approved April 12, 1975.

CHAPTER NO. 392

AN ACT TO AMEND SECTIONS 43-218, 43-310 AND 43-311, R.C.M. 1947, TO IMPLEMENT THE LEGISLATIVE RECOMMENDATIONS OF THE MAJORITY REPORT OF THE MONTANA SALARY COMMISSION BY INCREASING THE COMPENSATION OF ELECTIVE OFFICIALS IN THE LEGISLATIVE BRANCH; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-218, R.C.M. 1947, is amended to read as follows:

"**43-218. Pre-session caucus — house appropriation and senate finance and claims committee member — per diem and expenses.** As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the *legislature* are elected, the majority and minority parties of each house of the *legislature* shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees and hire any necessary employees. Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin

reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests. Members of these committees shall receive *a daily salary as provided in section 43-310, R.C.M. 1947,* and *forty dollars ($40)* per day *expenses* for each day engaged in committee business. *Salary* and expenses shall be paid by the department of administration from the appropriation for operation of the preceding *legislature.*"

Section 2. Section 43-310, R.C.M. 1947, is amended to read as follows:

"**43-310. Compensation and mileage for members for regular and special sessions and the interim.** (1) Legislators are entitled to *a salary commensurate to that of grade 8, step 1 classified state employee, for the fiscal year* during a *regular or special* session of the legislature, and twelve cents (12¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the shortest regularly traveled automobile route. *Legislators may be compensated for one (1) round trip home for each regular and special session, provided, however, that legislators are not entitled to more than one (1) round trip home if a special session is held within seven (7) days of a regular session.*

(2) Members are also entitled to *forty* dollars *($40) per day, seven (7) days a week payable weekly during a legislative session, as reimbursement for expenses incurred in attending the session. Expense payments shall stop when the legislature recesses for more than three (3) days and shall resume when the legislature reconvenes.*

(3) While going to, attending, and returning from legislative standing committee meetings and necessary committee business authorized by the chairman of the legislative council during the legislative interim, legislators are entitled to*:*

(a) a mileage allowance of twelve cents (12¢) per mile for each mile of travel,

(b) *forty dollars ($40) per day expenses,* and

(c) *a daily salary as provided in section 43-310, R.C.M. 1947.*

(4) Legislators are also entitled to a mileage allowance of twelve cents (12¢) per mile for travel to and from their respective pre-session caucus meeting."

Section 3. **Effective date.** This act is effective for presession caucuses engaged in by members of the 45th Legislature. In all other affects, this act is effective January 3, 1977.

Approved April 12, 1975.

CHAPTER NO. 393

AN ACT TO AMEND SECTION 82A-1303, R.C.M. 1947, TO INCREASE THE MEMBERSHIP OF THE BOARD OF LIVESTOCK; TO PROVIDE FOR THE QUALIFICATIONS OF MEMBERS OF THE BOARD; TO

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PROVIDE FOR REPLACEMENT OF EXISTING MEMBERS AS THEY VACATE OFFICE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1303, R.C.M. 1947, is amended to read as follows:

"**82A-1303. Board of livestock — composition.** (1) There is a board of livestock.

(2) The board consists of *seven (7)* members appointed by the governor with the consent of the senate. *Each* member shall be a resident of *the* state and *an active livestock producer. A member shall be appointed upon the recommendation of the related industry and shall have the following qualifications:*

(a) two (2) are cattle producers, one (1) from each congressional district within the state;

(b) two (2) are cattle producers at large;

(c) one (1) is a dairy producer representing the dairy and poultry industry;

(d) one (1) is a swine producer; and

(e) one (1) is a sheep producer.

An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in section 82A-106 (2).

(3) The governor shall designate the chairman of the board.

(4) A member shall serve for a term of six (6) years.

(5) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in section 82A-112 *(7)* (e)."

Section 2. There is a new R.C.M. section numbered 82A-1303.1 that reads as follows:

82A-1303.1. Transition. A member of the board on the effective date of this act shall continue in office until his term expires. Upon the expiration of the term of a member, or if a member resigns or otherwise vacates his office, the governor shall appoint as a new member, or as a replacement, a person qualified under the provisions of section 82A-1303 and not then represented on the board. Each new member shall be appointed for a full term and each replacement member shall be appointed to fulfill the term of the member replaced.

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved April 12, 1975.

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CHAPTER NO. 394

AN ACT TO REGULATE THE INTRASTATE DISTRIBUTION AND SALE OF HAZARDOUS SUBSTANCES INTENDED OR SUITABLE FOR USE BY THE GENERAL PUBLIC; TO INVESTIGATE AND EVALUATE GENERAL USE HAZARDOUS SUBSTANCES AND RESULTING ACCIDENTS AS THEY RELATE TO PUBLIC HEALTH; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-7101 that reads as follows:

69-7101. Short title. This act shall be cited as the "Montana Consumer Product Safety Act of 1975".

Section 2. There is a new R.C.M. section numbered 69-7102 that reads as follows:

69-7102. Definitions. In this act:

(1) "Department" means the department of health and environmental sciences.

(2) "Person" includes an individual, partnership, corporation, or association, or his legal representative or agent.

(3) "Commerce" means all commerce within this state and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.

(4) "Hazardous substance" means:

(a) (i) Any substance or mixture of substances which:

(A) is toxic,

(B) is corrosive,

(C) is an irritant,

(D) is a strong sensitizer,

(E) is flammable or combustible, or

(F) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably forseeable ingestion by children.

(ii) Any substances which the department by rule finds, under section 69-7103(1), meet the requirements of subparagraph (a)(i) of this paragraph.

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(iii) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this act in order to protect the public health.

(iv) Any toy or other article intended for use by children which the department by rule determines in accordance with section 69-7103(5) of this act presents an electrical, mechanical, or thermal hazard.

(b) The term "hazardous substance" does not apply to pesticides subject to the Federal Pesticide Environmental Control Act or the Montana Pesticide Act, nor to foods, drugs, and cosmetics subject to the Montana Food, Drug and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but the term applies to any article which is not itself a pesticide within the meaning of the Federal Pesticide Environmental Control Act or the Montana Pesticide Act, but which is a hazardous substance within the meaning of subparagraph (a) of this paragraph by reason of bearing or containing such a pesticide; the term applies to pesticides where human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(c) The term "hazardous substance" does not include any source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

(5) "Toxic" means any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation or absorption through any body surface.

(6) (a) "Highly toxic" means any substance which falls within any of the following categories:

(i) produces death within fourteen (14) days in one-half (½) or more of a group of ten (10) or more laboratory white rats each weighing between two hundred (200) and three hundred (300) grams, at a single dose of fifty (50) milligrams or less per kilogram of body weight, when orally administered; or

(ii) produces death within fourteen (14) days in one-half (½) or more of a group of ten (10) or more laboratory white rats each weighing between two hundred (200) and three hundred (300) grams, when inhaled continuously for a period of one (1) hour or less at an atmosphere concentration of two hundred (200) parts per million by volume or less of gas or vapor or two (2) milligrams per liter by volume or less of mist or dust, if such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(iii) produces death within fourteen (14) days in one-half (½) or more of a group of ten (10) or more rabbits tested in a dosage of two hundred (200) milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four (24) hours or less.

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(b) If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(7) "Corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.

(8) "Irritant" means any substance not corrosive within the meaning of subsection (7) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(9) "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

(10) "Extremely flammable" applies to any substance which has a flash point at or below twenty degrees (20) fahrenheit as determined by the tagliabue open cup tester.

(a) "Flammable" applies to any substance which has a flash point of above twenty degrees (20) to and including eighty degrees (80) fahrenheit, as determined by the tagliabue open cup tester.

(b) "Combustible" applies to any substance which has a flash point above eighty degrees (80) fahrenheit to and including one hundred fifty degrees (150), as determined by the tagliabue open cup tester; except that the flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to such materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with such methods.

(11) "Radioactive substance" means a substance which emits ionizing radiation.

(12) "Label" means a display of written, printed or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto, and a requirement made by or under authority of this act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears:

(a) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper, and

(b) on all accompanying literature where there are directions for use, written or otherwise.

(13) "Immediate container" does not include package liners.

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(14) "Misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable for use by the public or by children, which substance, except as otherwise provided by or under section 69-7103, fails to bear a label:

(a) which states conspicuously,

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the department by rule permits or requires the use of a recognized generic name;

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as "flammable", "combustible", "vapor harmful", "causes burns", "absorbed through skin", or similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under section 69-7103;

(vii) instruction, when necessary or appropriate, for first-aid treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by subsection (6);

(ix) instructions for handling and storage or packages which require special care in handling or storage:

(A) "keep out of the reach of children" or its practical equivalent, or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(b) on which any statement required under subparagraph (a) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(15) (a) "Banned hazardous substance" means:

(i) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(ii) any hazardous substance intended, or packaged in a form suitable

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for use by the general public which the department by rule classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this act for that substance, the degree or nature of the hazard involved in the presence or use of such substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce. However, the department by rule: shall exempt from clause (i) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed the directions and warnings.

(b) Proceedings for the issuance, amendment, or repeal of rules under clause (ii) of subparagraph (a) of this paragraph shall be governed by the provisions of section 69-7103 of the act.

(16) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(17) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(a) from fracture, fragmentation, or disassembly of the article,

(b) from propulsion of the article (or any part or accessory thereof),

(c) from points or other protrusions, surfaces, edges, openings, or closures,

(d) from moving parts,

(e) from lack or insufficiency of controls to reduce or stop motion,

(f) as a result of self-adhering characteristics of the article,

(g) because the article (or any part or accessory thereof) may be aspirated or ingested,

(h) because of instability, or

(i) because of any other aspect of the article's design or manufacture.

(18) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

(19) "Court" means, in section 69-7103, the district court for the first judicial district, and in sections 69-7106 and 69-7107, the district court is the district in which the violation occurs.

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Section 3. There is a new R.C.M. section numbered 69-7103 that reads as follows:

69-7103. Declaration of hazardous substance — labeling requirements — court proceedings. (1) When in the judgment of the department such action will promote the objectives of this act by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance, for the purposes of this act, any substance or mixture of substances which the department finds meets the requirements of subparagraph (a)(i) of section 69-7102(4).

(2) If the department finds that the requirements of section 69-7102(14)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, the department may by rule establish such reasonable variations or additional label requirements as necessary for the protection of the public health and safety, and any such hazardous substance intended, or packaged in a form suitable, for use by the general public or by children, which fails to bear a label in accordance with the rules shall be a misbranded hazardous substance.

(3) If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this act is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting such substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

(4) If the department finds that the hazard of an article subject to this act is such that labeling adequate to protect the public health and safety cannot be devised, or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

(5) (a) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this act.

(b) If, before or during a proceeding under paragraph (a) of this subsection, the department finds that, because of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and the department gives notice of such finding, the toy or other article shall be a banned hazardous substance for purposes of this act until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(c) (i) In the case of any toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time before the sixtieth day after the rule making the determination is issued by the department, file a peti-

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tion with the court for a judicial review of such determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(ii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the department, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in such other manner, and upon such terms and conditions, as the court may consider proper. The department may modify their findings as to the facts, or make new findings, by reason of the additional evidence so taken, and they shall file such modified or new findings, and their recommendation, if any, for the modification or setting aside of their original determination, with the return of such additional evidence.

(iii) Upon the filing of the petition under this paragraph, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under subparagraph (ii) of this paragraph, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under subparagraphs (i) and (ii) of this paragraph, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this paragraph, the court may grant appropriate relief pending conclusion of the review proceedings.

Section 4. There is a new R.C.M. section numbered 69-7104 that reads as follows:

69-7104. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance.

(2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce, or while the substance is held for sale (whether or not the first sale) after shipment in commerce, and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(3) The receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(4) The giving of a guarantee or undertaking referred to in section 69-7105(2)(a) which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

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(5) The failure to permit entry or inspection as authorized by section 69-7110(1) or to permit access to any copying of any record as authorized by section 69-7111.

(6) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Montana Food, Drug and Cosmetic Act.

(7) The use by any person to his own advantage, or revealing other than to the department or officers or employees of the agency, or to the courts when relevant in any judicial proceeding under this act, of any information acquired under authority of section 69-7110 concerning any method of process which as a trade secret is entitled to protection.

Section 5. There is a new R.C.M. section numbered 69-7105 that reads as follows:

69-7105. Penalty — exceptions. (1) Any person who violates any of the provisions of section 69-7104 is guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500) or imprisoned for not more than ninety (90) days, or both. For offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than one (1) year, or a fine of not more than three thousand dollars ($3,000), or both imprisonment and fine.

(2) No person is subject to the penalties of subsection (1) of this section:

(a) for having violated section 69-7104(3), if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the department, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or

(b) for having violated section 69-7104(1), if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous or a banned hazardous substance within the meaning of those terms in the act.

Section 6. There is a new R.C.M. section numbered 69-7106 that reads as follows:

69-7106. Additional remedies. In addition to the remedies herein-

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after provided, the department is authorized to apply to court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 69-7104, irrespective of whether or not there exists an adequate remedy at law.

Section 7. There is a new R.C.M. section numbered 69-7107 that reads as follows:

69-7107. Detainer of misbranded or banned hazardous substance. (1) Whenever a duly authorized agent of the department finds or has probable cause to believe that any hazardous substance is a misbranded, or is a banned hazardous substance, within the meaning of this act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, misbranded or is a banned hazardous substance and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(2) When an article detained or embargoed under subsection (1) has been found by such agent to be misbranded or a banned hazardous substance, he shall petition the judge or the police, county, or circuit court in whose jurisdiction the article is detained or embargoed for a libel of condemnation of such article. When such agent has found that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under supervision of such agent, and all court costs and fees and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling under the supervision of an agent of the department. The expense of such supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this act, and that the expenses of such supervision have been paid.

Section 8. There is a new R.C.M. section numbered 69-7108 that reads as follows:

69-7108. Duties of department and county attorney. It is the duty of the department or the county attorney to whom the department reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this act is reported to any such

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attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his view before the department, either orally or in writing, or by attorney, with regard to such contemplated proceeding.

Section 9. There is a new R.C.M. section numbered 69-7109 that reads as follows:

69-7109. Department authorized to adopt rules. (1) The authority to adopt rules for the efficient enforcement of this act is vested in the department.

(2) The department has the authority to adopt by reference without public hearing rules adopted under the Federal Hazardous Substances Act as amended.

Section 10. There is a new R.C.M. section numbered 69-7110 that reads as follows:

69-7110. Powers of department's agents. (1) For enforcement of this act, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

(a) to enter, at reasonable time, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed or held for introduction into commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in commerce;

(b) to inspect, at reasonable times, and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and

(c) to obtain samples of such materials or packages thereof, or of such labeling.

(2) If the officer or employee obtains any sample, prior to leaving the premises, he shall pay or offer to pay the owner, operator, or agent in charge for such sample and give a receipt describing the samples obtained.

(3) The department will conduct investigations of reported accidental injuries, illnesses and deaths resulting from the use or misuse of all hazardous substances intended or suitable for use by the general public as defined under section 69-7102(4)(a)(i). Investigations will evaluate the causative hazardous substance and circumstances of the accident for enforcement of this act. Where the offending hazardous substance is a pesticide regulated by another agency as the Federal Environmental Pesticide Control Act or the Montana Pesticide Act, the investigation will yield recommendations to the appropriate regulating agency for appropriate action.

Section 11. There is a new R.C.M. section numbered 69-7111 that reads as follows:

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69-7111. Carriers required to permit inspection. For the purpose of enforcing the provisions of this act, carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates; provided, that evidence obtained under this section is not used in a criminal prosecution of the person from whom obtained; provided further, that carriers are not subject to the other provisions of this act by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

Section 12. There is a new R.C.M. section numbered 69-7112 that reads as follows:

69-7112. Department to develop accident prevention and health oriented education programs. The department in cooperation with other state and federal agencies shall develop and conduct appropriate accident prevention and health oriented educational programs. The educational programs shall inform the public of the hazards, proper handling and use, disposal, storage and transportation of hazardous substances and the proper medical and first aid procedures for accidents resulting from hazardous substances.

Section 13. There is a new R.C.M. section numbered 69-7113 that reads as follows:

69-7113. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing any judgments, research findings, decrees, or court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health. Nothing in this section shall be construed to prohibit the department from collecting, reporting and illustrating the results of the investigations of the department.

Section 14. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Section 15. This act shall take effect upon its passage and approval, but no penalty or condemnation shall be enforced for any violation of this act which occurs: (1) prior to the expiration of the sixth calendar month after the month in which this act is enacted, or

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(2) prior to the expiration of such additional period or periods, ending not more than eighteen (18) months after the month of enactment of this act, as the department may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods; provided, that the department may limit the application of such additional period or periods to violations related to specified provisions of this act, or to specified kinds of hazardous substances or packages thereof.

Approved April 12, 1975.

CHAPTER NO. 395

AN ACT TO AMEND SECTION 41-1121, R.C.M. 1947, TO PROVIDE FOR THE ESTABLISHMENT OF TEN HOUR WORK DAYS FOR THE EMPLOYEES OF REGULAR COUNTY ROAD AND BRIDGE DEPARTMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1121, R.C.M. 1947, is amended to read as follows:

"**41-1121. Hours of labor for state and municipal governments, mines, mills, smelters.** A period of eight hours shall constitute a day's work in all works and undertakings carried on or aided by any municipal, county, or state government, first class school districts, and on all contracts let by them, and for all janitors, except in courthouses of sixth and seventh class counties, engineers, firemen, caretakers, custodians and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by any municipal, county, or state governments, school districts of first class, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing and treatment of coal; except in cases of emergency when life or property are in imminent danger. Provided, that for fire fighters in cities of the first and second class, a work week shall be a period of a maximum of forty hours during a five day week. *In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a forty (40) hour work week consisting of four (4) consecutive ten (10) hour days. No employee shall be required to work in excess of eight (8) hours in any one (1) work day if they prefer not to.*"

Approved April 12, 1975.

CHAPTER NO. 396

AN ACT TO PROVIDE FOR REGISTRATION TO VOTE BY MAIL;

AMENDING SECTION 23-3006, R.C.M. 1947; AND REPEALING SECTIONS 23-3722 AND 23-3723, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3006, R.C.M. 1947, is amended to read as follows:

"**23-3006. Method of registering — absent electors in the United States service — felony provisions.** (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and by:

(a) Answering any questions asked by the registrar concerning items of information called for by registry cards;

(b) Signing and verifying or affirming the affidavit or affidavits on the back of the card.

(2) An elector may register by mailing, postage paid, a properly completed registry card to the registrar in the county in which he resides.

(a) The registrar shall send registry cards for mail registrations to all persons requesting them, whether the application is made in writing or by telephone, and shall, in addition, arrange for the cards to be available from city and town clerks within the county and may arrange for them to be available at other locations within the county. The mail registry card shall be in the form prescribed by the secretary of state.

(b) The elector shall complete, sign, and either verify or affirm the registry card before a notary public or other officer empowered to administer oaths, or, complete and sign the card and obtain the signature, address and voting precinct of at least one registered voter in the county, who shall witness for the facts stated on the registry card.

(c) The registration card must be received on or before the day of the close of registration but in no event less than ten (10) days before the election.

(d) Upon receipt of a properly executed registry card the county registrar shall cause to be sent to the new voter a postcard affirming registration and giving the location of the voter's polling place. On the face of the notification shall be printed the words, "Do Not Forward, Return Postage Guaranteed".

(3) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) Mailing the registry card filled out and signed under oath to the registrar, or

(b) Mailing the federal post card application filled out and signed under oath to the registrar.

(4) A person is guilty of a felony and upon conviction shall be imprisoned in the state prison for not more than three (3) years, if:

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(a) He falsely personates another and causes the person so personated to be registered; or,

(b) Falsely represents his name or other information required *upon his registry card, and causes or attempts to cause registration with the card*; or,

(c) Causes any name to be placed upon the registry lists other than in the manner provided by this act*; or,*

(d) Signs a registry card knowingly witnessing any false or misleading statement."

Section 2. Sections 23-3722 and 23-3723, R.C.M. 1947, are repealed.

Approved April 12, 1975.

CHAPTER NO. 397

AN ACT REVISING THE ELIGIBILITY CRITERIA FOR CLASS EIGHT PROPERTY TAX CLASSIFICATION; AMENDING SECTION 84-301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city

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or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

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Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, *with appurtenant land not exceeding five (5) acres, which together have a market value of* not more than *twenty-seven* thousand five hundred dollars *($27,500)*, which *dwelling* is owned or under a contract for deed, and which is actually occupied *for at least ten (10) months per year as the primary residential dwelling of*:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower *sixty-two (62)* years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient *or recipients* of retirement *or disability* benefits whose income from all sources is not more than *six* thousand dollars *($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a* single person *or* a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided

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by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies *or maintains as his or her primary residential dwelling,* such *land and* improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the *assessed* value of said property shall not *be increased* during the life of the recipient of retirement benefits or widow or widower covered under this class, *unless the owner-resident makes a substantial improvement in the dwelling.* For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. All property not included in the eight (8) preceding classes."

Approved April 12, 1975.

CHAPTER NO. 398

AN ACT TO PROVIDE THAT PAYMENT OF TAXES ON NET PROCEEDS OF MINES AND ROYALTY ASSESSMENTS SHALL BE PAID IN ACCORDANCE WITH THE PAYMENT SCHEDULE PROVIDED FOR GENERAL PROPERTY TAXES; AMENDING SECTION 84-5409, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-5409, R.C.M. 1947, is amended to read as follows:

"**84-5409. Taxation and payment on royalty interests.** At the time of transmitting net proceeds assessments the state department of revenue shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, *as specified in this section. Said* taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines. *Taxes on such royalty*

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assessments, and taxes on net proceeds of mines shall be payable at the times specified in section 84-4103, and any delinquencies in the payment of same shall be subject to the interest and penalties provided in section 84-4103."

Approved April 12, 1975.

CHAPTER NO. 399

AN ACT RELATING TO MOSQUITO ABATEMENT DISTRICTS; PROVIDING THAT PETITIONERS FOR CREATION, ENLARGEMENT, OR DISSOLUTION OF MOSQUITO CONTROL DISTRICTS, AND OBJECTORS THERETO, BE QUALIFIED ELECTORS OR PROPERTY OWNERS WITHIN THE PROPOSED DISTRICTS; THAT MOSQUITO CONTROL BOARD MEMBERS BE REAL OR PERSONAL PROPERTY OWNERS; PROVIDING FOR NOTICE OF HEARING BY MAIL TO NONRESIDENT OWNERS; PROVIDING AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTIONS 16-4203 THROUGH 16-4207, AND 16-4211, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4203, R.C.M. 1947, is amended to read as follows:

"16-4203. Petition for district — hearing. *(1)* When a petition signed by not less than twenty-five per cent (25%) of the *qualified electors of the proposed district or twenty-five percent (25%) of the* owners of any property within the boundaries and whose names appear as such property owners upon the last completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of such county, asking for the creation of a mosquito control district, the commissioners shall set a day for the hearing of the same and order notice thereof to be given to all persons interested.

(2) Said petition shall set forth the boundaries of the proposed district and request that the property within the boundaries be organized into a mosquito control district. Such proposed district may include any incorporated or unincorporated city or town of the county.

(3) Sufficient funds to defray the cost of mailing, publication and posting of notice shall accompany the petition."

Section 2. Section 16-4204, R.C.M. 1947, is amended to read as follows:

"16-4204. Notice of hearing — mailing — publication — posting. *(1)* The commissioners by resolution shall fix a time for a hearing upon said petition at not less than two (2) nor more than four (4) weeks from the time of presentation thereof.

(2) If addresses are known, the commissioners shall cause notice of the

hearing to be mailed to each nonresident owner of taxable real and personal property within the proposed district.

(3) Commissioners shall cause notice to be posted in three (3) public places within the district, and where the district is partly in one county and partly in another county, notice must be posted in each county, but not in three (3) places in each county. The notice shall state that any qualified elector *or owner of property lying* within the boundaries of the proposed district may appear before the board at the time of hearing and show cause why the district should not be created, or may file his written objection to creation of the district at any time before the date of said hearing.

(4) The commissioners shall also cause notice to be given of the time and place of the hearing and methods of objection by publication in a newspaper within or nearest the district, and if the district is partly in one (1) county and partly in another county in a newspaper in each county, if such newspaper exists. The publication must be for two (2) weekly issues.

(5) Posting and first publication shall be at least ten (10) days before the hearing."

Section 3. Section 16-4205, R.C.M. 1947, is amended to read as follows:

"16-4205. Hearing — objections to district — creation of district. At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth, and whether or not the notice required herein has been published and posted as required. At such hearing, the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and creation of said district, and shall also consider the written objections to the creation of the district. Said hearing may be adjourned from time to time for determination of facts, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing. At such a hearing or at any time following the first publication of notice of such hearing, until the time of said hearing, any qualified elector *or an owner of property within the proposed district* may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him. Upon such hearing, if the commissioners determine there has been compliance with all of the requirements herein set forth, they shall by an order, duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein, except, where, at the time of the hearing, the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of health and environmental sciences to determine if it would be advisable to exclude the geographical area from the district. Upon reconvening, the commissioners shall define and establish such boundaries as are advisable. Provided,

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(1) that if fifty-one per cent (51%) or more of the qualified electors *or of the owners of property* within the boundaries of the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district;

(2) or, if, as the result of objections filed, the commissioners, in their discretion, determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the department of health and environmental sciences for its review and recommendations."

Section 4. Section 16-4206, R.C.M. 1947, is amended to read as follows:

"**16-4206. Enlargement of districts — petitions — objections.** Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by the not less than twenty-five per cent (25%) of the *electors within the adjacent land or twenty-five percent (25%) of the* owners of any property lying within the boundaries of the area proposed to be annexed to the district and whose names appear as such property owners upon the last completed assessment role of the county in which the said proposed area is situated. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by section 16-4204. If, upon such hearing, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as thereof originally included therein. If fifty-one per cent (51%) or more of the qualified electors *or* of *the property owners in* the area proposed to be annexed to the district file their objection to the creation of such district, the commissioners shall not act on such petition. *If, as a result of objections filed, the commissioners, in their discretion, determine the question in doubt whether or not the annexation of the area is to the best interest of the area and of the residents therein, the commissioners may cause the issue to be decided by referendum at the next regular election.* If such additional area is added, such territory shall be subject to the tax authorized by this act together with the preexisting area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged."

Section 5. Section 16-4207, R.C.M. 1947, is amended to read as follows:

"**16-4207. Mosquito control board — members — term — per**

diem. Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three (3) nor more than five (5) members, each of whom shall be *an elector and property owner* within the boundaries of the district and whose name appears as such property owner upon the last completed assessment roll of the county in which said district is situated. The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time, and for that purpose may be set for any length of time not more than three (3) years. Thereafter the terms of all members shall be three (3) years, the term of one (1) member expiring on the first day of *January* in each year. The board shall be a body corporate and shall act as such, and the members shall be public officers and they shall organize each year by choosing a chairman who shall be from among the appointed members, and a secretary. All such board members shall serve without pay, except that the appointed members shall receive per diem as allowed by state law for each day when the board is actually in session and their necessary mileage as provided by law. The health officer having jurisdiction in the proposed district, sanitarian or a member of his staff, and the county extension agent, if the county has any, or all such officers, shall be ex officio members of such board without vote."

Section 6. Section 16-4211, R.C.M. 1947, is amended to read as follows:

"**16-4211. Dissolution of mosquito control district — hearing — notice — unexpended funds.** A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per cent (51%) of the qualified electors *or of the property owners within the district.* Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof *to be mailed to all nonresident property owners within the district whose addresses are known,* to be posted in at least three (3) public places within said district and to be published at least once in the official newspaper of the county, published in the district, such posting and publication to be at least ten (10) days before said date of hearing. If the district is partly in one (1) county and partly in another county, notice must be posted in each county but not three (3) places in each county, and notice must be published in the official newspaper of each county. If upon such hearing, the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations, and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget providing that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled together with legal proof thereof. Any funds unexpended at the dissolution of a district shall be paid over into the county general fund, and where the district is partly in one (1) county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall

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be based on the taxable value of the property which is within the district. Physical assets may be liquidated as provided for in section 16-1009, and where the district is partly in one (1) county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets."

Section 7. This act is effective on its passage and approval.

Approved April 12, 1975.

CHAPTER NO. 400

AN ACT AMENDING SECTION 87-103 TO RAISE THE PERCENTAGE OF THE AVERAGE WEEKLY WAGE FROM THE PRESENT FIFTY PERCENT TO FIFTY-FIVE PERCENT AND SIXTY PERCENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-103, R.C.M. 1947, is amended to read as follows:

"**87-103. Benefits.** (a) Payment of benefits. Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the division, in accordance with such rules and regulations as the division may prescribe.

(b) Weekly benefit amount. Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount, an amount equal to one twenty-sixth (1/26) of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of one dollar ($1), shall be rounded to the nearest multiple of one dollar ($1).

On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by fifty-two (52) and the average weekly wage, rounded to the nearest cent, thus determined. Fifty percent (50%) of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of one dollar ($1), shall be computed to the nearest multiple of one dollar ($1). *Beginning on July 1, 1975, the fifty percent (50%) of the average weekly*

wage shall be raised to fifty-five percent (55%) and beginning July 1, 1976, be raised to sixty per cent (60%) of the average weekly wage.

The minimum weekly benefit amount shall be twelve dollars ($12).

The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period, other than the quarter in which his wages were highest, an amount totaling not less than thirteen (13) times his weekly benefit amount.

(d) Wage record. The division shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(e) Benefits. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse, or if there be no surviving spouse, then to the surviving children, or if there be no surviving children, then to the next of kin, without the necessity of any recipient obtaining letters testamentary or of administration."

Approved April 12, 1975.

CHAPTER NO. 401

AN ACT TO AUTHORIZE SUBSIDIARY TRUST COMPANIES TO HAVE ONE OR MORE TRUST OFFICES; TO AUTHORIZE CERTAIN BANKS TO MAINTAIN ONE OR MORE TRUST OFFICES; TO PROVIDE FOR SUBSTITUTION IN FIDUCIARY CAPACITIES; TO AMEND SECTION 86-905, R.C.M. 1947; AND TO PROVIDE AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 5-1501 that reads as follows:

5-1501. Short title. This act may be cited as "The Subsidiary Trust Company Act of 1975".

Section 2. There is a new R.C.M. section numbered 5-1502 that reads as follows:

5-1502. Definitions. As used in this act:

(1) "subsidiary trust company" means any corporation which is incorporated under the banking laws of this state and any national banking association having its main office in this state more than fifty percent (50%) of the voting stock of which is owned by an owning bank holding company and which has as its purposes any one or more of the purposes

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described in section 5-106, except that a subsidiary trust company may not be empowered to accept deposits or otherwise to conduct commerical banking business.

(2) "affiliated bank" with respect to a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office in this state more than fifty percent (50%) of the voting stock of which is owned by the same owning bank holding company that owns more than fifty percent (50%) of the voting stock of the subsidiary trust company.

(3) "affiliated bank" with respect to another bank which is not a subsidiary trust company, means any bank incorporated under the laws of this state and any national banking association having its main office located in this state more than fifty percent (50%) of the stock of which is owned by the same owning bank holding company that owns more than fifty percent (50%) of the voting stock of such other bank.

(4) "owning bank holding company", with respect to a subsidiary trust company or an affiliated bank, means a bank holding company as defined in the United States Bank Holding Company Act of 1956, as amended.

(5) "main office", with respect to a subsidiary trust company or an affiliated bank, is the place designated in the articles of incorporation or articles of association of that subsidiary trust company or affiliated bank at which its principal functions are to be conducted.

(6) "trust office", with respect to a subsidiary trust company, means an office, including the main office, of the subsidiary trust company maintained for the purpose of conducting its business.

(7) "trust office", with respect to a bank which is not a subsidiary trust company, means an office other than the main office of that bank maintained solely for the purpose of conducting trust business as described in section 4.

(8) "fiduciary capacity" means a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes the capacities of trustee (including trustee of a common trust fund), executor, administrator, personal representative, registrar or transfer agent with respect to stocks, bonds or other evidences of indebtedness of any corporation, association, municipality, state or public authority, guardian of estates, receiver, conservator, escrow agent, agent for the investment of money, attorney-in-fact and any other similar capacity.

Section 3. There is a new R.C.M. section numbered 5-1503 that reads as follows:

5-1503. Organization of subsidiary trust companies. A subsidiary trust company shall be incorporated under the laws of this state in accordance with, and subject to, the provisions of chapter 2 of Title 5, R.C.M. 1947, or under the laws of the United States. To the extent not inconsistent with the provisions of this chapter, any subsidiary trust company incorporated under the laws of this state shall be subject to the laws of this state generally applicable to trust companies. A subsidiary trust

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company formed under the laws of the United States, shall be subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state.

Section 4. There is a new R.C.M. section numbered 5-1504 that reads as follows:

5-1504. Permissible business of subsidiary trust companies. The permissible business of a subsidiary trust company shall be to engage in such trust business as may be engaged in by a trust company under section 5-106 and such business as is incidental thereto. A subsidiary trust company shall not accept deposits or otherwise conduct commercial banking business.

Section 5. There is a new R.C.M. section numbered 5-1505 that reads as follows:

5-1505. Trust offices of subsidiary trust companies. Notwithstanding the provisions of section 5-1028, a subsidiary trust company may have a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which, on January 1, 1975, was authorized to act in fiduciary capacities, but not elsewhere.

Section 6. There is a new R.C.M. section numbered 5-1506 that reads as follows:

5-1506. Trust offices of affiliated banks. Notwithstanding the provisions of section 5-1028, a bank having trust powers may be authorized by the department of business regulation or by the comptroller of the currency, in the case of a national banking association, to maintain a trust office at any one or more locations in this state in the same building with the main office of any affiliated bank which, on January 1, 1975, was authorized to act in fiduciary capacities.

Section 7. There is a new R.C.M. section numbered 5-1507 that reads as follows:

5-1507. Transfer of fiduciary relationships from affiliated banks to subsidiary trust companies. (1) Upon any subsidiary trust company being duly authorized to commence the business for which it is organized, such subsidiary trust company may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for each of its affiliated banks specified in the application, and each such specified affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of each affiliated bank joining in the application is located and shall designate each fiduciary account existing at the date thereof with respect to which such subsidiary trust company requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, to wit:

(a) in the case of an existing fiduciary account which may be revoked,

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terminated or amended, each person who, alone or together with others, is empowered to revoke, terminate or amend the same;

(b) in the case of an existing fiduciary account with respect to which any person other than a court has the power to remove the corporate fiduciary, each person who, alone or together with others, is empowered to remove the corporate fiduciary;

(c) in the case of an existing fiduciary account which is an estate of a deceased person or which is a guardianship or conservatorship, to the clerk of the court in which such estate, guardianship or conservatorship matter is pending;

(d) in the case of an existing fiduciary account not described in any of the foregoing subparagraphs, to each income beneficiary of such account and to each beneficiary who, were such account terminated at the date of the application respecting such account, would be entitled to share in distributions of income or principal thereof; and

(e) in the case of any existing fiduciary account wherein an affiliated bank specified in the application is acting with a co-fiduciary, to each such co-fiduciary at his last known address.

(2) When any such application shall have been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and give notice thereof as hereinafter provided. The clerk of court shall cause a copy of such notice to be published at least once a week for three (3) successive weeks preceding the hearing date, the first such publication to be at least twenty-five (25) days preceding the hearing date, such publication to be in a newspaper of general circulation published in each county in which the main office of an affiliated bank specified in the application is located, or if in any case there be no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least twenty-five (25) days preceding the hearing date, the clerk of the court shall cause a copy of such notice to be mailed by first class mail to each person identified in the application as being entitled to mailed notice under the provisions of this act, at his address last known to the applicant as set forth in the application.

(3) The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the subsidiary trust company which has filed the application, the name of each affiliated bank which has joined in such application, that the application requests that the subsidiary trust company be substituted in every fiduciary capacity for each of its affiliated banks specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the subsidiary trust company is requested, may appear and file objection to substitution, and shall be entitled to be heard with respect to such objection.

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(5) On such date of hearing, upon finding that due notice has been given as required by this act and upon finding that the subsidiary trust company has been duly authorized to commence the business for which it is organized by the department of business regulation, or the comptroller of the currency if the subsidiary trust company is a national banking association, the district court shall enter an order substituting the subsidiary trust company in every fiduciary capacity for each of its specified affiliated banks, excepting as may be otherwise specified in the application, and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the subsidiary trust company shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation in a will or other instrument heretofore or hereafter executed of a bank as fiduciary shall be deemed a designation of the subsidiary trust company substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other instrument of any discretionary power shall be deemed conferred upon the subsidiary trust company deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the subsidiary trust company which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the subsidiary trust company is initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the subsidiary trust company all assets held by the bank as fiduciary (except assets held for accounts with respect to which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of the subsidiary trust company without the necessity of any instrument of transfer or conveyance.

Section 8. There is a new R.C.M. section numbered 5-1508 that reads as follows:

5-1508. Transfer of fiduciary relationships between affiliated banks. (1) Any bank which has received approval, pursuant to section 6 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank, and such affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of such affiliated bank is located and shall designate each fiduciary account existing at the date thereof with respect to which the applicant bank requests substitution, but fiduciary capacities

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in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who shall be those persons specified in subsections (a) to (e), inclusive, of section 5-1507.

(2) When any such application shall have been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and shall cause notice thereof to be given by publication and mailing in the manner required by section 5-1507.

(3) The notice to be published and mailed with respect to each such application shall state the time and place of the hearing thereon, the name of the bank which has filed the application, the name of the affiliated bank which has joined in such application, that the application requests that the applicant bank be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the applicant bank is requested, may appear and file objection to substitution, and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this act and upon finding that the applicant bank has received the requisite approval from the department of business regulation, or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application, excepting as may be otherwise specified in the application, and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the applicant bank shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation in a will or other instrument heretofore or hereafter executed of a bank as fiduciary shall be deemed a designation of the applicant bank substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other such instrument of any discretionary power shall be deemed conferred upon the applicant bank deemed designated as the fiduciary pursuant to this section.

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(7) A bank shall account jointly with the applicant bank which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the applicant bank is initially so substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to such applicant bank all assets held by such affiliated bank as fiduciary (except assets held for accounts with respect of which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of such applicant bank without the necessity of any instrument or transfer or conveyance.

Section 9. Section 86-905, R.C.M. 1947, is amended to read as follows:

"**86-905. Transfer of office prohibited.** *Except as provided in sections 5-1507 and 5-1508, the* trustee shall not transfer his office to another or delegate the entire administration of the trust to a co-trustee or another."

Section 10. **Effective date.** This act is effective on its passage and approval.

Approved April 12, 1975.

CHAPTER NO. 402

AN ACT PROVIDING FOR DISCLOSURE TO THE DIVISION OF WORKMEN'S COMPENSATION OF ATTORNEY FEE ARRANGEMENTS, AND REGULATING ATTORNEY FEES IN WORKMEN'S COMPENSATION CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 92-619 that reads as follows:

92-619. Attorney's fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workmen's compensation claim, the attorney shall submit to the division a contract of employment stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workmen's compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

Approved April 14, 1975.

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CHAPTER NO. 403

AN ACT ADOPTING CERTAIN PROVISIONS OF THE UNIFORM ALCOHOLISM AND INTOXICATION ACT, AMENDING SECTION 11-927 AND REPEALING SECTION 94-8-105, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-927, R.C.M. 1947, is amended to read as follows:

"**11-927. Prevention of and punishment for disturbing the peace.** The city or town council has power: To prevent and punish intoxication (subject to the limits established in section *80-2723*), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals, within the city or town, and within three miles of the limits thereof."

Section 2. There is a new R.C.M. section numbered 80-2723 that reads as follows:

80-2723. Criminal laws limitations. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) Nothing in this section affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons."

Section 3. There is a new R.C.M. section numbered 80-2724 that reads as follows:

80-2724. Public intoxication not criminal offense. (1) A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition, but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by section 80-2716.

(2) If none of the alternatives in section 80-2716 is reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to himself or others.

(3) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions.

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Section 4. Section 94-8-105 is repealed.

Approved April 14, 1975.

CHAPTER NO. 404

AN ACT TO REVISE TAX APPEALS PROCEDURES BY PROVIDING FOR THE RECEPTION OF ADDITIONAL EVIDENCE ON JUDICIAL REVIEW; AMENDING SECTION 84-709.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-709.1, R.C.M. 1947, is amended to read as follows:

"**84-709.1. Judicial review of contested cases.** (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this act.

(2) Proceedings for review shall be instituted by filing a petition in district court, and serving a copy thereof on the state tax appeal board, within thirty (30) days after service of the final decision of the state tax appeal board, or if a rehearing is requested within thirty (30) days after the decision thereon. All parties to the appeal shall cause to be served on the state tax appeal board a copy of all pleadings and documents they shall file in such proceeding.

(3) Notwithstanding the provisions of section 82-4216, subsection (6), the court may, for good cause shown, permit additional evidence to be introduced."

Section 2. There is a new R.C.M. section numbered 84-709.2 that reads as follows:

84-709.2. Petition for interlocutory adjudication. After a proceeding has commenced before a county tax appeals board, or the state tax appeals board, but before arguments have been heard, the parties to the proceeding may petition a district court to make an interlocutory adjudication as provided under section 84-709.3. A petition for such adjudication shall be signed by each party to the proceeding. One party shall be designated as the petitioner and every other party shall be designated a respondent. The court may in its discretion grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, statute or regulation and do not require the hearing of evidence to be resolved, and that the controversy would be more expeditiously resolved by such adjudication.

Section 3. There is a new R.C.M. section numbered 84-709.3 that reads as follows:

84-709.3. Jurisdiction to make interlocutory adjudication. A dis-

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trict court may make an interlocutory adjudication of an issue pending in a county or state tax appeals board if that issue involves only the interpretation of a constitutional provision, statute or regulation and does not require the hearing of evidence. Appeals from the ruling of the court may be appealed as in other civil actions.

Approved April 14, 1975.

CHAPTER NO. 405

AN ACT WHICH PROVIDES DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE TERM "WITHOUT CONSENT"; AMENDING SECTIONS 94-2-101 AND 94-5-501, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"**94-2-101. General definitions.** Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

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(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

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(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it." The singular term shall include the plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum (½ of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (½ of 1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep; or

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

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(29) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"—A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

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(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judical, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record secret scientific, technical, merchan-

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dising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, advisor, consultant, administrator, executor, guardian or court-appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"—A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by any body member of another person or penetration of the vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

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(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

(e) expose any person to hatred, contempt or ridicule; or

(f) harm the credit or business repute of any person; or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars ($150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars ($150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

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(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding."

Section 2. Section 94-5-501, R.C.M. 1947, is amended to read as follows:

"**94-5-501. Definitions.** *(1)* In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

(2) As used in sections 94-5-503 and 94-5-505 the term "without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnaping to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old."

Approved April 14, 1975.

CHAPTER NO. 406

AN ACT TO IMPOSE A TAX ON THE USE OF SPECIAL FUEL AND LICENSE TAX ON THE PRIVILEGE OF ENGAGING IN AND CARRYING ON BUSINESS OF DISTRIBUTING GASOLINE AND PROVIDING FOR CERTIFICATION THAT SUCH TAX IS NECESSARY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special fuel tax — distributor's tax.** There is hereby levied and imposed as a temporary measure a tax on the use of special fuel and a license tax on the privilege of engaging in and carrying on business of distributing gasoline excluding aviation gasoline as defined in section 84-1846(8); said tax shall be in addition to those already imposed by sections 84-1832.1 and 84-1847, R.C.M. 1947, and shall be in the amount of one and one-half cents (1 ½¢) per gallon on each gallon of special fuel and gasoline excluding aviation gasoline. Such tax shall be levied and imposed by the department of revenue not later than ninety (90) days after certification by the governor to the department that the

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imposition of such tax is necessary in order that the state of Montana obtain full benefits under the provisions of the Federal-Aid Highway Act and all acts amendatory thereto. Any tax levied and imposed pursuant to this section shall expire on June 30, 1977.

Approved April 14, 1975.

CHAPTER NO. 407

AN ACT FOR THE REVISION OF THE LAWS RELATING TO OBSCENITY; AMENDING SECTIONS 94-8-110 AND 94-8-110.1, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-8-110, R.C.M. 1947, is amended to read as follows:

"**94-8-110. Obscenity.** (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene to anyone under the age of eighteen (18); or

(b) Presents or directs an obscene play, dance or other performance or participates in that portion thereof which makes it obscene to anyone under the age of eighteen (18); or

(c) Publishes, exhibits or otherwise makes available anything obscene to anyone under the age of eighteen (18); or

(d) Performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of eighteen (18); or

(e) Creates, buys, procures or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of eighteen (18); or

(f) Advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) it is a representation or description of perverted ultimate sexual acts, actual or simulated, or

(b) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated, or

(c) it is a patently offensive representation or description of masturbation, excretory functions or lewd exhibition of the genitals, and

(d) taken as a whole the material:

(i) applying contemporary Montana standards, appeals to the prurient interest in sex,

(ii) portrays conduct described in (a), (b), or (c) above in a patently offensive way, and

(iii) lacks serious literary, artistic, political or scientific value.

(3) In any prosecution for an offense under this section evidence shall be admissible to show:

(a) The predominant appeal of the material, and what effect if any, it would probably have on the behavior of people;

(b) The artistic, literary, scientific, educational or other merits of the material;

(c) The degree of public acceptance of the material in this state;

(d) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or

(e) Purpose of the author, creator, publisher or disseminator.

(4) A person convicted of obscenity shall be fined *at least* five hundred dollars ($500) *but not more than one thousand dollars ($1,000),* or imprisoned in the county jail for a term not to exceed six (6) months, or both.

(5) No city or municipal ordinance may be adopted which is more restictive as to obscenity than the provisions of this section and section 94-8-110.1."

Section 2. Section 94-8-110.1, R.C.M. 1947, is amended to read as follows:

"**94-8-110.1. Public display of offensive sexual material.** (1) A person is guilty of public display of offensive sexual material when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, marquee or similar place, any pictorial, three-dimensional or other visual representation of a person or a portion thereof of the human body that predominantly appeals to prurient interest in sex, and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors*; and does not*

(a) separate that material by an opaque structure from other materials displayed, and

(b) establish, by official identification, that each person viewing the displayed material is at least eighteen (18) years of age.

(2) A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual material and if minors are permitted to attend the showing of the motion picture then being featured.

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(3) A drive-in movie screen may not display any material prohibited by this section in such manner that the display is easily visible from any public street, sidewalk, thoroughfare or transportation facility.

(4) A person convicted of the public display of offensive sexual material shall be fined *at least* five hundred dollars ($500) *but not more than one thousand dollars ($1,000),* or imprisoned in the county jail for a term not to exceed six (6) months, or both."

Section 3. This act is effective upon passage and approval.

Approved April 14, 1975.

CHAPTER NO. 408

AN ACT TO AMEND SECTION 31-134, R.C.M. 1947, PROVIDING FOR EXAMINATION OF APPLICANTS FOR MOTORCYCLE ENDORSEMENT AND PROVIDING FOR ISSUANCE OF CLASSIFIED CHAUFFEUR'S LICENSES WITHOUT EXAMINATION TO HOLDERS OF VALID CHAUFFEUR'S LICENSES AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-134, R.C.M. 1947, is amended to read as follows:

"**31-134. Examination of applicants.** (a) The board shall examine every applicant for an operator's, chauffeur's license, *or motorcycle endorsement,* except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle *or motorcycle.* The board shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than thirty (30) days from the date the application is received.

(b) A classified chauffeur's license of the lowest classification specified by regulations established pursuant to the provisions of section 31-128 (a) shall be issued without examination to any individual who possesses a non-classified chauffeur's license or who presents a certificate of operation of farm vehicles in excess of twenty-eight thousand (28,000) pounds as specified by the regulations established pursuant to the provisions of section 31-128(a), at the time of his renewal next following passage of this act.

(c) A classified chauffeur's license of the highest classification specified by regulations established pursuant to the provisions of section 31-128 (a) shall be issued without examination to any individual who possesses a

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non-classified chauffeur's license at the time of his renewal next following passage of this act, provided that the individual presents at the time of renewal a certificate of driver qualifications as specified by regulations established pursuant to the provisions of section 31-128 (a).

(d) A motorcycle endorsement as required in section (a) of this act shall be issued without examination to any individual who possesses a non-endorsed license of any type at the time of his renewal next following passage of this act, provided that the individual presents at the time of renewal a certificate of motorcycle qualifications as specified by regulations established pursuant to the provisions of this act."

Section 2. This act is effective January 1, 1976.

Approved April 14, 1975.

CHAPTER NO. 409

AN ACT TO AMEND SECTION 31-135, R.C.M. 1947, PROVIDING THAT OPERATOR AND CHAUFFEUR LICENSES SHALL NOT BE VALID FOR OPERATION OF MOTORCYCLES UNLESS ENDORSED AND PROVIDING THE FEE FOR SUCH ENDORSEMENT AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-135, R.C.M. 1947, is amended to read as follows:

"31-135. Licenses issued to operators and chauffeurs — renewals and expiration thereof. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers' licenses, and shall make necessary rules and regulations governing such sales. The board, upon payment of the fees specified in this act, (of which sum five per cent (5%) shall be retained by the county treasurers for use of the county general fund) shall issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, and such licenses shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. A person shall be deemed to have applied for renewal of a Montana operator's or chauffeur's license if such application is made within three (3) months of the expiration of such license.

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(c) Licenses issued shall expire on the anniversary of the date of birth of the licensee four (4) years or less after the date of issue. Notwithstanding the foregoing provisions, the highway patrol board shall stagger initial license terms for the purpose of equalizing annual issuance of licenses and shall collect license fees proportionate to the term of such licenses.

(d) Whenever the board issues an original license to a person under the age of eighteen (18) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(e) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time. *Licenses issued after passage of this act shall not be valid for the operation of a motorcycle until the holder thereof has completed the requirements of section 31-134 and the license has been clearly marked with the words "motorcycle endorsement".*

(f) Driver license fees. Fees for driver license shall be as follows:

1. Driver's license—two dollars ($2) per year or fraction thereof.

2. Motorcycle endorsement—fifty cents (50¢) per year or fraction thereof."

Section 2. This act is effective January 1, 1976.

Approved April 14, 1975.

CHAPTER NO. 410

AN ACT CREATING A PERMANENT JOINT INTERIM COMMITTEE OF THE LEGISLATURE KNOWN AS THE ADMINISTRATIVE CODE COMMITTEE; PROVIDING FOR THE REVIEW OF RULES PROPOSED TO BE ADOPTED UNDER THE ADMINISTRATIVE PROCEDURE ACT BY THE COMMITTEE; AMENDING SECTION 82-4204, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-4203.2 that reads as follows:

82-4203.2. Administrative code committee — appointment and term of members — officers. The administrative code committee con-

sists of four (4) members of the senate and four (4) members of the house of representatives appointed before the sixtieth legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. No more than two (2) of the appointees of each house may be members of the same political party. A member of the committee shall serve until his term of office as a legislator ends or until the end of the sixtieth legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first. The committee shall elect one (1) of its members as chairman and such other officers as it deems necessary.

Section 2. There is a new R.C.M. section numbered 82-4203.3 that reads as follows:

82-4203.3. Meetings. The committee shall meet as often as may be necessary, during and between legislative sessions. Committee members shall be reimbursed from the appropriation to the legislative council for their actual and necessary expenses incurred as a result of interim meetings, and paid compensation as provided by law for interim standing committees.

Section 3. There is a new R.C.M. section numbered 82-4203.4 that reads as follows:

82-4203.4. Appointment of employees and consultants. The administrative code committee may appoint whatever employees, consultants, or counsel are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

Section 4. There is a new R.C.M. section numbered 82-4203.5 that reads as follows:

82-4203.5. Powers of the committee. (1) The committee shall review all proposed rules referred to it under section 82-4204 and may:

(a) prepare written recommendations for the adoption, amendment or rejection of a rule and submit those recommendations to the department proposing the rule when a rule-making hearing will not be held in accordance with the provisions of section 82-4204;

(b) prepare recommendations for the adoption, amendment or rejection of a rule and submit oral or written testimony at a rule-making hearing; or

(c) request that a rule-making hearing be held in accordance with the provision of section 82-4204.

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the Administrative Procedure Act or the repeal, amendment or adoption of a rule as provided in section 82-4203.1.

Section 5. Section 82-4204, R.C.M. 1947, is amended to read as follows:

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"**82-4204. Adoption — amendment or repeal of rules — emergency rules.** (1) Prior to the adoption, amendment or repeal of any rule, the agency shall:

(a) Give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in section 6 (2) [82-4206 (2)] of this act and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least twenty (20) days in advance of the agency's intended action. If any statute shall provide for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case shall the notice period be less than twenty (20) days.

(b) Afford interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ten per cent (10%) or twenty-five (25) of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency or by an association having not less than twenty-five (25) members who will be directly affected. Contested case procedures need not be followed in hearings held pursuant to this section. Where a hearing is otherwise required by statute, nothing herein shall be deemed to alter that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(c) Refer each rule proposed to be adopted, following compliance with paragraphs (a) and (b), to the administrative code committee of the legislature.

(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than one hundred and twenty (120) days, but the adoption of an identical rule under subsections (1) (a) and (1) (b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare shall be subject to judicial review.

(3) No rule adopted after the effective date of this act shall be valid unless adopted in substantial compliance with subsections (1) and (2) of this section.

(4) An agency may use informal conferences and consultations as a

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means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this act.

(5) Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed."

Section 6. This act is effective upon passage and approval.

Approved April 14, 1975.

CHAPTER NO. 411

AN ACT AMENDING SECTION 84-4905, R.C.M. 1947, TO PROVIDE THAT ADJUSTED GROSS INCOME DOES NOT INCLUDE BENEFITS PAID FROM POLICE RESERVE FUNDS TO RETIRED POLICEMEN; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4905, R.C.M. 1947, is amended to read as follows:

"**84-4905. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of another state or territory, or county, municipality, district, or other political subdivision thereof:

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof:

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(b) All benefits received under the Federal Employees Retirement Act not in excess of three thousand six hundred dollars ($3,600).

(c) All benefits paid under the Montana Teachers Retirement Act which are specified as exempt from taxation by section 75-2713.

(d) All benefits paid under the Montana Public Employees Act which are specified as exempt from taxation by section 68-1303.

(e) All benefits paid under the Montana Highway Patrol Retirement Act which are specified as exempt from taxation by section 31-221.

(f) Montana income tax refunds or credits thereof.

(g) All benefits paid by first or second class cities for the policemen's retirement system provided for by the Metropolitan Police Law.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect, but with respect to which the election provided for under section 84-1501.2, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distribution from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect."

Section 2. This act shall be effective for all taxable years beginning after December 31, 1974.

Approved April 14, 1975.

CHAPTER NO. 412

AN ACT AMENDING SECTION 84-2202, R.C.M. 1947, TO PROVIDE THAT OIL PRODUCTION ROYALTY INTERESTS MAY BE REQUIRED TO SHARE THE BURDEN OF THE OIL PRODUCERS' LICENSE TAX ON A PRO RATA BASIS AND EXEMPTING GOVERNMENTAL ROYALTIES FROM SUCH TAX.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-2202, R.C.M. 1947, is amended to read as follows:

"**84-2202. Oil producers' license tax — amount — exceptions.** Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or

operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) Two and one-tenth per cent (2.1%) of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) Two and sixty-five hundredths per cent (2.65%) of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450) barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil, *except that any of the aforesaid interests that are owned by the federal, state, county or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any*

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royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 2. If a bill to amend section 84-2202 to tax the production of natural gas is enacted in 1975, it is the intention of the legislature that this act applies to natural gas production as well as oil production.

Section 3. Nothing in this act may be construed to impair obligations under contracts in force as of the effective date of this act, if such construction would violate the United States constitution.

Approved April 14, 1975.

CHAPTER NO. 413

AN ACT AMENDING SECTION 60-145, R.C.M. 1947, TO PROVIDE THAT THE PRIVILEGE AND LICENSE TAX ON OIL AND GAS PRODUCERS SHALL BE DUE AT THE TIME THE OIL AND GAS IS MARKETED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-145, R.C.M. 1947, is amended to read as follows:

"60-145. Privilege and license tax — quarterly statements — penalties — drilling permit fees — oil and gas conservation moneys. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter, and expenses of the board, the operators and producers of oil and gas shall pay an assessment not to exceed the amounts set forth in the following schedule on each barrel of crude petroleum originally produced, saved and marketed or stored within the state, or exported from the state, and on each ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state, or exported therefrom:

(a) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent (⅜¢) per barrel;

(b) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent (¾¢) per barrel; and,

(c) On wells producing, saving and marketing, storing, or exporting, natural gas, the operators and producers shall pay an assessment not to exceed two and one-half (2 ½) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet.

(2) The board shall by order, without prior notice, or hearing, fix the

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amount of the assessments and may, from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; however, the assessments fixed by the board may not exceed the limits prescribed in this section. The amounts of the assessments shall be a percentage factor (not to exceed one hundred percent (100%)) of the rates set forth in subsections (a), (b), and (c) above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in those subsections. The producers of the crude petroleum and natural gas shall pay the assessments on each barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and the producers shall be reimbursed for the payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others under section 84-6208.

(3) For the purposes of this section, a "lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one (1) lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one (1) particular unit agreement shall be considered as one (1) lease relative to payments to be made under this section.

(4) In addition to the above-mentioned privilege and license tax, a person, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, shall secure from the board a drilling permit and shall pay to the board therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars *($25)*; from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars *($75)*; seven thousand (7,000) feet and deeper, one hundred fifty dollars *($150)*.

(5) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August and November, of each calendar year, render a true statement to the state treasurer of the state, and a duplicate thereof to the board, duly signed and sworn to, of all crude petroleum produced *and marketed* by him in this state during the preceding quarter, and containing such other information as the board may require, and shall accompany the statement with the payment to the state treasurer of the assessment provided for in subsection (1) of this section, for the period covered by the statement. Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced *and marketed* by him in this state, and shall make payment of the assessment provided for in subsection (1) of this section, at such times and for such periods as may be prescribed by rule of the board. Any producer carrying on business at more than one (1) place or location in this state may include all those

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places of business in one (1) statement. *The assessment imposed herein shall be due at the time the oil or natural gas is marketed. Oil or natural gas shall be deemed marketed when it is removed from the property from which it was produced.*

(6) An assessment not paid within the time specified is delinquent, and a penalty of twenty-five percent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one percent (1%) per month from the date of delinquency until paid. Upon request of the board the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(7) All money collected under this chapter shall be deposited in the earmarked revenue fund by the state treasurer of the state, and shall be used for the purpose of paying all expenses of the board and for no other purpose; all these moneys shall be used by the board subject to the approval of the department of administration and biennial appropriations by the *legislature.*"

Approved April 14, 1975.

CHAPTER NO. 414

AN ACT AMENDING SECTION 23-3515, R.C.M. 1947, TO REQUIRE THE PRINTING OF BALLOT NUMBERS ON THE FRONT OF THE STUB.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3515, R.C.M. 1947, is amended to read as follows:

"**23-3515. Stub, size and contents.** (1) The ballot shall be printed on the same leaf with a stub, and separated by a perforated stub.

(2) The stub shall extend the entire width of the ballot, and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the names of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote, and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment, or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the *front* of the stub shall be printed or stamped by the registrar

or other officer, the consecutive number of the ballot, beginning with number one (1) and increasing in regular numerical order to the total number of ballots required for the precinct."

Approved April 14, 1975.

CHAPTER NO. 415

AN ACT REQUIRING IMPORTED MEATS TO BE LABELED AS SUCH IN FOOD STORES, AND PROVIDING A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 27-318 that reads as follows:

27-318. Stores to label imported meats — supplier to furnish information. Any grocery store or similar establishment selling fresh meat at retail shall, if possible, ascertain the origin of all fresh meat which it offers for sale. Such information shall be provided by the supplier of such meat at the time of delivery, if reasonably available to the supplier. On meat produced outside the United States of America, the store shall place the words "FOREIGN MEAT" or "MEAT FROM (country of origin)" in prominent letters upon the package in which such meat is sold to the consumer. If the country of origin of foreign meat is unknown, the words "COUNTRY OF ORIGIN UNKNOWN" shall be placed upon the package in like manner.

Section 2. There is a new R.C.M. section numbered 27-319 that reads as follows:

27-319. Penalty. A person in charge of a grocery store or similar establishment or a supplier of fresh meat who fails to comply with the provisions of this act by willfully failing to label foreign meat or provide information under the provisions of this act commits a misdemeanor, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250).

Section 3. There is a new R.C.M. section numbered 27-320 that reads as follows:

27-320. Findings and purpose. The legislature finds that sanitary meat inspection standards in other meat producing nations cannot be guaranteed to be equal to the standards applied to the inspection of American meat, and declares that the purpose of this act is to protect the public health and safety by placing Montana consumers on notice of the possibility of lower inspection standards in such other nations.

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Approved April 14, 1975.

CHAPTER NO. 416

AN ACT TO PROVIDE FOR A POPULAR VOTE ON THE QUESTION OF STATE FUNDING TO PUBLIC LIBRARY FEDERATIONS WITH A ONE (1) MILL LEVY ON ALL TAXABLE PROPERTY; AUTHORIZING THE STATE LIBRARY COMMISSION TO DISTRIBUTE GRANTS TO PUBLIC LIBRARY FEDERATIONS; DEFINING GRANT PROGRAMS; AMENDING SECTION 84-3804, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 44-304 that reads as follows:

44-304. Purpose. It is the purpose of this act to establish a program whereby state funds appropriated to the Montana state library commission may be allocated among three different grant programs. Such program of state funding is intended to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in section 44-212.

Section 2. There is a new R.C.M. section numbered 44-305 that reads as follows:

44-305. Administration by Montana state library commission. The Montana state library commission shall receive and administer the appropriation for state funding to public library federations. The commission shall allocate such appropriation to three types of grant programs according to section 44-307 and shall make grants to duly constituted library federations according to program applications submitted to and approved by the commission. Federations receiving grant monies shall report semiannually to the commission concerning the progress of the various projects for which state funding grants have been received, which report shall contain an accounting for all grant funds received.

Section 3. There is a new R.C.M. section numbered 44-306 that reads as follows:

44-306. Definitions of grant programs. (1) Basic grant defined: Basic grants are annual grants given to all federation headquarters libraries for the purpose of improving public library services within the federation and enabling public libraries within the federation to achieve and maintain the Montana public library standards as adopted and amended from time to time by the Montana state library commission.

(2) Establishment grant defined: Establishment grants are grants to federation headquarters libraries in order to provide basic library service to governmental units participating in library federations for the first

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time. The local governmental unit must contract with the headquarters library for federation services according to the provisions of section 44-213, and must contribute to the costs of providing such services. All funds will be administered by the federation headquarters library.

(3) Special project grant defined: Special project grants are grants to federation headquarters libraries to implement services not provided for in basic grants or to provide construction funds or remodelling funds. Grants for construction or remodelling must be equally matched by local funds; grants for services may fund the full cost of such services.

Section 4. There is a new R.C.M. section numbered 44-307 that reads as follows:

44-307. Allocation of funds by grant program. The Montana state library commission shall allocate state funding appropriations among three grant programs on the following basis: sixty percent (60%) of each annual appropriation shall be allocated to the basic grant program; thirty percent (30%) of each annual appropriation shall be allocated to the establishment grant program; and ten percent (10%) of each annual appropriation shall be allocated to the special project grant program.

Section 5. There is a new R.C.M. section numbered 44-308 that reads as follows:

44-308. Formulae for distribution of grants. (1) The formula for distribution of basic grants among federations will be determined by multiplying population times area times percentage of local support. The population figure shall be the population of the area served by the federation as of the latest published federal census. The area figure shall be the number of square miles of the area served by the federation. The local support figure shall be the average of the percentage of the maximum allowable mill levy for public library services of each governmental unit participating in the federation actually expended for public library purposes by each such governmental unit from all sources. In computing the percentage of local support the amount actually expended for public library services shall not include building construction and remodeling funds, but it shall include federal or state revenue sharing monies, all purpose levies, library fund levies, local general fund monies, in-kind services, or any other local public monies expended for public library services. In computing the percentage of local support for a federation no participating governmental unit shall be included at more than one hundred percent (100%) of local support, and in computing the basic grant no federation as a whole shall be included at more than one hundred percent (100%) of local support.

Applications for basic grants for the following fiscal year must be submitted to the Montana state library commission by April 30 preceding the fiscal year.

(2) Establishment grants may be applied for any time during the biennium until January 1 of the last year of the biennium. Any funds not granted by January 1 of the last year of the biennium will be allocated to special project grants and distributed by the Montana state library commission according to the special project grant plans approved.

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(3) Applications and plans for special project grants shall be submitted no later than March 1 of the second year of the biennium. Any moneys not granted by April 1 of the second year of the biennium will be allocated to the basic grant fund and distributed according to the basic grant formula for the following fiscal year.

Section 6. Section 84-3804, R.C.M. 1947, is amended to read as follows:

"**84-3804. Increase of state tax levy — support units of university — library systems.** *(1)* Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system.

(2) Upon approval of the electors of this state to be determined by their vote at the general election to be held in November, 1976, the legislature shall levy a property tax of not more than one (1) mill on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1977. All revenue from this property tax levy shall be appropriated to the state library commission for the support of public library federations."

Approved April 14, 1975.

CHAPTER NO. 417

AN ACT TO AMEND SECTION 26-202.1, R.C.M. 1947, TO PROVIDE FOR PREFERENCE IN THE ISSUANCE OF SPECIAL ELK PERMITS TO APPLICANTS WHO DID NOT RECEIVE A SPECIAL ELK PERMIT FOR THE PREVIOUS SEASON.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"**26-202.1. Licenses — fees — classifications of licenses — fees and powers under licenses.** (1) Class A license—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dollars ($5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of two dollars ($2) receive a Class A-1 license, which will entitle the holder to pursue, hunt,

shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars ($3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, three dollars ($3); Class A-4, Deer B Tag, five dollars ($5); Class A-5 Elk Tag, three dollars ($3); Class A-6, Black or Brown Bear Tag, five dollars ($5); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars ($20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under

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the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1 (2) (a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Big Game License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of one hundred twenty-five dollars ($125) for the license year from May 1, 1967 to April 30, 1968 and thereafter for subsequent license years upon payment of the sum of one hundred fifty dollars ($150) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars ($10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of the sum of thirty-five dollars ($35) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Special licenses. Any applicant who is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Mountain Goat, resident fifteen dollars ($15), nonresident thirty dollars ($30);

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Mountain Sheep, resident twenty-five dollars ($25), nonresident fifty dollars ($50);

Antelope, resident three dollars ($3), nonresident ten dollars ($10);

Grizzly Bear, resident five dollars ($5), nonresident grizzly, black or brown bear, thirty-five dollars ($35).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid applications for special licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10%) of the total issued.

(12) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(13) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws

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or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half (½) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(h) Special elk permits. In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the commission for the district, these permits shall be awarded by a drawing. Persons making valid application who did not receive a special elk permit during the season immediately preceding the drawing shall receive first preference in this drawing for first, second, and third choice hunting districts. The commission may promulgate the rules necessary to implement this subsection.

(15) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(16) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of twenty dollars ($20) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5 and A-6 licenses. The commission shall furnish each holder of a sportsman's license an appropriate decal.

(17) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(18) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12)

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years of age or older, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission."

Approved April 14, 1975.

CHAPTER NO. 418

AN ACT AMENDING SECTION 82-1222, R.C.M. 1947, TO AUTHORIZE OFFICERS OTHER THAN THE STATE FIRE MARSHALL TO CAUSE ALTERATION, REPAIR AND DEMOLITION OF DILAPIDATED BUILDINGS; AND REQUIRING PAYMENT OF THE PROCEEDS OF SALE ON FORECLOSURE OF THE LIEN TO BE PAID TO THE GOVERNMENTAL BODY WHICH ORDERED SUCH ALTERATION, REPAIR OR DEMOLITION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1222, R.C.M. 1947, is amended to read as follows:

"**82-1222. Proceedings on failure to comply with order.** If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure, as herein provided, within the time fixed by the court, in case a trial is had therein, then the state fire marshall *or any other officer authorized in section 82-1218,* shall proceed to cause such building or structure to be altered, repaired or demolished in accordance with the directions contained in such order; and where a building or structure is demolished in accordance with such order *the state fire marshall or any other officer authorized in section 82-1218,* may sell or dispose of the salvaged materials therefrom at public auction upon five days posted notice. *This person* shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him and the amount, if any, received from such salvage sale, to the court for approval and allowance; and thereupon the court shall examine, correct if necessary and allow said expense account; and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated, and if the amount thereof is not paid by the owner or other party in interest within *three (3)* months after the account has been examined and approved by the court the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury *of the governmental unit which incurred the expenses.* If the amount received as salvage or on sale shall exceed the expense incurred

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by the *governmental unit* the court shall direct the payment of the surplus to *those parties with encumbrances, mortgages or liens on the real estate, in order of their priority, and any surplus thereafter to the owner,* or the payment of the same into court for *their* use and benefit."

Approved April 14, 1975.

CHAPTER NO. 419

AN ACT CREATING THE OFFICE OF CODE COMMISSIONER TO SUPERVISE THE RECODIFICATION OF THE REVISED CODES OF MONTANA 1947, TO PROVIDE FOR RECODIFICATION ON A CONTINUING BASIS; REPEALING SECTIONS 12-301 THROUGH 12-329, 12-331, 12-332, AND 12-332.1, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 12-501 that reads as follows:

12-501. Definitions. As used in this act:

(1) "Codes" means the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes.

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes without changing the meaning, effect, or intent of any law:

(a) adopting a uniform system of punctuation, capitalization, and numbering;

(b) substituting the appropriate code section reference for reference to a section of an "act";

(c) substituting calendar date for "effective date";

(d) creating new titles, chapters, sections, or other divisions of the code.

Section 2. There is a new R.C.M. section numbered 12-502 that reads as follows:

12-502. Code commissioner office created. There is created within the legal services division of the legislative council the office of code commissioner.

Section 3. There is a new R.C.M. section numbered 12-503 that reads as follows:

12-503. Code commissioner qualifications. To be eligible to be code commissioner a person must be licensed to practice law in Montana for at least five (5) years and demonstrate a knowledge of code arranging and recodification procedures.

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Section 4. There is a new R.C.M. section numbered 12-504 that reads as follows:

12-504. Name of recodification. The recodification shall be known as the "Montana Code Annotated".

Section 5. There is a new R.C.M. section numbered 12-505 that reads as follows:

12-505. Code commissioner duties. Subject to the general supervision and policy of the legislative council the code commissioner shall:

(1) prior to January 1, 1979, recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare the same for publication;

(2) prior to January 1, 1979, prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner" together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change;

(3) prior to November 1, 1976, and prior to November 1 of each year thereafter, prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws;

(f) correct inaccurate references to titles of officers or agencies or to other statutes as may be necessary to obtain consistency with current law;

(4) cause to be prepared for inclusion, at the end of each section of the statutes, the following material:

(a) reference to the statutory history of the section;

(b) annotations of state and federal court decisions relating to the subject matter of the section; and

(c) such editorial notes, cross references, and other matter as the commissioner considers desirable or advantageous;

(5) cause to be prepared for publication with the Montana Codes Annotated:

(a) Magna Charta;

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(b) Declaration of Independence;

(c) Constitution of the United States of America and amendments thereto;

(d) Acts of Congress relating to the authentication of laws and records;

(e) Organic Act of the Territory of Montana;

(f) The Enabling Act;

(g) The 1889 and 1972 constitutions of the state of Montana and any amendments thereto;

(h) Ordinances relating to federal relations and elections;

(i) Rules of civil, criminal, appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(j) A complete subject index, popular name index, comparative disposition tables or cross reference indices relating sections of the Montana Code Annotated to prior compilations and session laws.

(6) After publication of the Montana Code Annotated:

(a) annotate, arrange, assign catchlines and code section numbers to and prepare for publication all laws of a general and permanent nature enacted at each legislative session;

(b) continue to codify, index, arrange, rearrange divisions and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and submit to each legislature a report which is certified as the "Official Report of the Montana Code Commissioner — (year)" which indicates in tabular or other forms all changes made during the continuous recodification, other than punctuation and capitalization, to clearly indicate the character of each change made since the first publication of the Montana Code Annotated;

(7) from time to time confer with members of the judiciary and the state bar relative to recodification procedures.

Section 6. There is a new R.C.M. section numbered 12-506 that reads as follows:

12-506. Effect of Montana Code Annotated. (1) The Montana Code Annotated shall be enacted as a repeal and a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated shall:

(a) repeal all statutes and parts of statutes of a general and permanent nature not contained in the Montana Code Annotated;

(b) not revive a law repealed or superseded before the effective date of Montana Code Annotated;

(c) not affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of Montana Code Annotated;

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(d) not affect any action, suit, or proceeding pending on such effective date.

(3) The Montana Code Annotated shall be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by such enactment.

(4) No implication or presumption of legislative construction is to be drawn from the classification and arrangement of the Montana Code Annotated.

(5) Annotations, code commissioner notes, and other editorial material to the Montana Code Annotated may not be construed to form a part of the legislative text but to be only for the purpose of convenience, orderly arrangement, and information.

Section 7. There is a new R.C.M. section numbered 12-507 that reads as follows:

12-507. Publications. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the department of administration contract for their publication.

(2) The methods of sale to the public of the Montana Code Annotated, and supplements or other subsequent and ancillary publications thereto, may be included as an alternative specification and bid, and as a part of a contract to be let by bids by the department of administration.

(3) The sales price to the public shall be fixed by the legislative council but shall not exceed the cost price plus twenty percent (20%). All revenues generated from the sale to the public of the Montana Code Annotated shall be remitted to the state treasurer for the purpose of reimbursing the general fund for appropriations made for the use of the office and facilities of the legislative council under this act.

(4) Sets of the Montana Code Annotated purchased by the state and its political subdivisions shall be for the cost price of the sets.

Section 8. There is a new R.C.M. section numbered 12-508 that reads as follows:

12-508. Copyright — ownership. The Montana Code Annotated, supplements, or other publications ancillary thereto, as published, shall be the sole property of the state of Montana and shall be copyrighted for and in behalf of the state of Montana by the secretary of state.

Section 9. There is a new R.C.M. section numbered 12-509 that reads as follows:

12-509. Deposit of code — certification. (1) Upon completion of the printing and binding of the Montana Code Annotated the code commissioner shall deposit a complete set with the secretary of state, along with a certification that the set comprises the Montana Code Annotated as authorized by this act, and enacted by the legislature.

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(2) Within ten (10) days after that deposit, the secretary of state shall publish a notice thereof once in a newspaper of general circulation in each judicial district within the state specifying in the notice the date on which the Montana Code Annotated becomes effective.

(3) The secretary of state or the code commissioner may further publicize the effective date of the Montana Code Annotated to the extent considered necessary or desirable by the commissioner.

Section 10. There is a new R.C.M. section numbered 12-510 that reads as follows:

12-510. Format as approved by legislative council. (1) The publication of updates to the Montana Code Annotated may be as a cumulative supplement, replacement volume, or in any other format approved by the legislative council.

(2) The supplements or replacements shall be certified and reported to the legislature by the legislative council, approved, and enacted by the legislature as the official laws of Montana, published, copyrighted, and deposited with the secretary of state and shall be referred to as the Montana Code Annotated. The supplements and replacements shall become effective on the date deposited with and certified to the secretary of state.

(3) The legislative council may issue such supplementary and ancillary publications as it considers necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements thereto.

Section 11. **Repealer.** Sections 12-301 through 12-329, 12-331, 12-332, and 12-332.1 are repealed.

Section 12. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1975.

CHAPTER NO. 420

AN ACT TO GENERALLY REVISE AND UPDATE MONTANA STATUTES THAT AFFECT JUSTICE COURTS RELATING TO FEES, ALLOWANCES, TRAINING, JURISDICTIONAL LIMITS, HOLIDAYS, CALLING OF OTHER JUSTICES, CONCURRENT JURISDICTION, VENUE AND FORMATION OF TRIAL JURY; AMENDING SECTIONS 11-727, 11-1604, 25-301, 25-307, 25-310, 25-311, 25-409, 25-410, 93-401, 93-403, 93-408, 93-409, 93-410, 93-507, 93-6811, 93-6802.2, 93-7704, 95-1910, 95-2003, 95-2005, R.C.M. 1947, AND REPEALING SECTIONS 93-6802, 93-6804, 93-6807 AND 93-6808, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-727, R.C.M. 1947, is amended to read as follows:

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"**11-727. Compensation of justices of the peace acting as police judge.** In towns, the council may designate a justice of the peace of the county in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, and the justices of the peace so designated *may* act as a police judge in all cases arising out of a violation of ordinances where the town is a party. *Where the justice of the peace must travel from his town of residence to hold court, he shall be paid per diem and mileage as provided in section 59-801 by the town in which court is held.*"

Section 2. Section 11-1604, R.C.M. 1947, is amended to read as follows:

"**11-1604. When judge cannot act.** In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the sixth degree, and in case of his sickness, absence, or inability to act, the police judge or mayor may call in a justice of the peace, *or some qualified resident of* the city or town, to act in his place and stead."

Section 3. Section 25-301, R.C.M. 1947, is amended to read as follows:

"**25-301. Justice court fees in civil actions.** The following is the schedule of fees which *shall* be *paid* in every civil action in a justice court:

Three dollars and fifty cents ($3.50) *when complaint is filed*, to be paid by the plaintiff.

Three dollars and fifty cents ($3.50) *when the defendant appears*, to be paid by the defendant.

Three dollars and fifty cents ($3.50) *by* the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the three dollars and fifty cents ($3.50) for the *filing of the complaint* shall be made for any services, including issuing and return of execution.

Three dollars and fifty cents ($3.50) for all services in an action where judgment is rendered by confession.

Three dollars and fifty cents ($3.50) for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate."

Section 4. Section 25-307, R.C.M. 1947, is amended to read as follows:

"**25-307. Collection and disposition of fees—itemized statement.** Justices of the peace shall collect the fees prescribed by law for *justice courts* and shall pay the same into the county treasury of the county wherein they hold office, on *or before the tenth* day of each month, to be credited to the *general* fund of the county; and shall also file an itemized statement showing all fees received during the preceding month in *the justice court*; said statement shall also state that all fees required by law to be paid in connection with matters pending before *the court* during the preceding month have been paid into the county treasury, and listed in said itemized statement, and that he has not received or been promised,

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nor has any one else received or been promised for him, any other moneys, emolument, or thing whatsoever by virtue of or in connection with his office; and said statement shall be subscribed and sworn to by the justice. This section, however, shall not apply to "miscellaneous fees" excepted by section 25-304, supra."

Section 5. Section 25-310, R.C.M. 1947, is amended to read as follows:

"**25-310. Justice court costs in criminal actions.** The following *court costs* shall be *withheld* by justices of the peace from fines and forfeitures in applicable criminal actions.

(1) for *each action filed* seven dollars and fifty cents ($7.50);

(2) where there is a trial, *an additional seven dollars and fifty cents ($7.50).*"

Section 6. Section 25-311, R.C.M. 1947, is amended to read as follows:

"**25-311. Remittance and retention of justice court fees.** The justices of the peace shall remit to the county treasurer the fees as set forth in section 25-310; provided however, that in all cases justices of the peace may retain the miscellaneous fees provided for in section 25-304."

Section 7. Section 25-409, R.C.M. 1947, is amended to read as follows:

"**25-409. Witnesses in courts not of record.** Witnesses in courts not of record in civil actions and proceedings shall receive three dollars ($3) for each day's actual attendance, and *mileage as provided in section 59-801* for each mile actually traveled in going from his residence by the usual traveled route to the said court and return."

Section 8. Section 25-410, R.C.M. 1947, is amended to read as follows:

"**25-410. Witnesses in criminal actions or coroner's inquests.** Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive three dollars ($3) per day for actual attendance, and *mileage as provided in section 59-801* for each mile actually and necessarily traveled from his place of residence to the said court and return."

Section 9. Section 93-401, R.C.M. 1947, is amended to read as follows:

"**93-401. Justices' courts and justices of the peace.** (1) There must be at least one (1) justice court in each county of the state. The board of county commissioners of each county of the state shall have authority to constitute one (1) additional justice court in their respective counties as the board deems necessary. One (1) justice court in each county must be located at the county seat and the board of county commissioners shall determine the location of the other justice court in their respective counties. Each justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the nonpartisan judicial ballot in the same manner as are judges of the district court. Each judicial office shall be a separate and independent office for election purposes and each office shall be numbered by the county

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commissioners and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A candidate may not file for more than one (1) office. Section 23-4511 prohibiting political party endorsement for judicial officers shall also apply to justices of the peace.

(3) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office take the constitutional oath of office, which must be filed with the county clerk.

(4) Before the county clerk may file the oath the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana, or

(b) a person who has held the office of justice of the peace within the preceding five (5) years, or

(c) a person who has completed the orientation course of study held under the direction of the university of Montana law school; or if a person is appointed after the course is offered he must agree to take the course at the next offering and failure to do so will disqualify him.

(5) The university of Montana law school shall present a course of study as soon as is practical following each general election. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice of the peace will hold court.

(6) There shall be an annual training session for all elected and appointed justices of the peace. This training session, which may be held in conjunction with the Montana magistrates' association convention, shall be supervised by the supreme court. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice holds court."

Section 10. Section 93-403, R.C.M. 1947, is amended to read as follows:

"**93-403. Holding court for another justice.** A justice of the peace of any county may hold the court of any other justice of the peace at his request, and while so acting is vested with the power of the justice for whom he so holds court, in which case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice for whom he so holds the court. *The visiting justice of the peace shall be paid all necessary and actual expenses including mileage by the county where court is held.*"

Section 11. Section 93-408, R.C.M. 1947, is amended to read as follows:

"**93-408. Jurisdiction of justices' courts.** The justice courts have jurisdiction:

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1. In actions arising on contract for the recovery of money only, if the sum claimed does not exceed *fifteen* hundred dollars *($1500) exclusive of court costs*;

2. In actions for damages not exceeding *fifteen* hundred dollars *($1500) exclusive of courts costs* for taking, detaining, or injuring personal property, or for injury to real property where no issue is raised by the verified answer of defendant involving the title to or possession of the same; in actions for damages not exceeding *fifteen* hundred dollars *($1500) exclusive of court costs* for injury to the person; provided, that in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, bastardy, abduction, and alienation of affections, the justice of the peace shall not have jurisdiction;

3. In actions to recover the possession of personal property, if the value of such property does not exceed *fifteen* hundred dollars *($1500)*;

4. In actions for a fine, penalty, or forfeiture, not exceeding *fifteen* hundred dollars *($1500)*, given by statute, or the ordinance of an incorporated city or town, where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

5. In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not exceed *fifteen* hundred dollars *($1500)*, though the penalty may exceed that sum;

6. To take and enter judgment for the recovery of money on the confession of a defendant, when the amount confessed does not exceed *fifteen* hundred dollars *($1500) exclusive of court costs.*"

Section 12. Section 93-409, R.C.M. 1947, is amended to read as follows:

"**93-409. Concurrent jurisdiction.** The justices' courts have concurrent jurisdiction with the district courts within their respective *counties* in actions of forcible entry and unlawful detainer."

Section 13. Section 93-410, R.C.M. 1947, is amended to read as follows:

"**93-410. Criminal jurisdiction.** The justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

1. *Theft of property not exceeding one hundred fifty dollars ($150) in value.*

2. Assault, *as defined in section 94-5-201.*

3. Breaches of peace, riots, routs, affrays, committing a willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or by both such fine and imprisonment."

Section 14. Section 93-507, R.C.M. 1947, is amended to read as follows:

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"**93-507. Nonjudicial days.** No court must be open, nor must any judicial business be transacted *on legal holidays as provided for in section 19-107 and* on a day appointed by the president of the United States, or by the governor of this state, for a public fast, thanksgiving, or holiday, except for the following purposes:

1. To give, upon their request, instructions to a jury when deliberating on their verdict.

2. To receive a verdict, or discharge a jury.

3. For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature; but injunctions, writs of prohibition, and habeas corpus may be issued and served on any day."

Section 15. Section 93-6811, R.C.M. 1947, is amended to read as follows:

"**93-6811. Answer to amended pleadings.** When a pleading is amended, the adverse party may answer it within such time, not exceeding two days, as the court may allow."

Section 16. Section 93-6802.2, R.C.M. 1947, is amended to read as follows:

"**93-6802.2. Demurrers abolished.** Demurrers and exceptions for insufficiency of a pleading shall not be used."

Section 17. Section 93-7704, R.C.M. 1947, is amended to read as follows:

"**93-7704. Calling another justice, when, by whom.** *(1) Disqualification. When a justice of the peace is disqualified from acting on any action because of the application of subsection (1), (2), or (3) of section 93-901, he shall either transfer the action to another justice court in the same county or call a justice from a neighboring county to preside in his behalf, who while so acting is vested with the power of the justice for whom he so holds court.*

(2) Illness or absence. In case of sickness, disability, or absence of a justice for such a period of time that the county commissioners of the county find that there is a delay in the proper administration of justice or upon the written request of the county attorney, another justice, if there is one readily available, or a police judge or some other qualified person shall be called to hold court for the absent justice until the return of the absent justice, and when so called and so acting that person is vested with the power of the justice for whom he so holds court.

(3) Vacation. During the time, when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the county commissioners shall handle the situation in the same manner as if the justice were sick or absent.

(4) Necessary expenses. Whenever a justice of the peace or other person is called to preside over the court of a justice who is disqualified, sick,

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or absent, that visiting justice of the peace or other person shall be paid all necessary and actual expenses including mileage and if that acting justice is not a justice of the peace receiving a salary then that acting justice shall receive such compensation as is proper for the time involved. Such expenses shall be a proper charge against the county where the court is held.

(5) Court docket entries. When another justice, or any other qualified person is called to preside in a justice court proper entries of all proceedings must be made in the docket of the justice for whom the visiting justice or person holds court. When the appointment is made by order of the county commissioners the order shall be placed in the court docket.

(6) Jurisdiction of called in person. When called to preside over a justice court as above provided the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom he so holds court."

Section 18. Section 95-1910, R.C.M. 1947, is amended to read as follows:

"95-1910. Order of trial. (a) The court may instruct the jury as to its duties. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subsection (d) of this section.

(b) The county attorney must state the case and offer evidence in support of the prosecution. The defendant may make his opening statement prior to the state's offer of evidence, or may state his defense and then offer evidence in support thereof after the state rests.

(c) The parties may then respectively offer rebutting testimony only, unless the court, for good cause, permits them to offer evidence upon their original case.

(d) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, and signed by the party, or his attorney, and delivered to the court. The instructions shall be settled by the court, without the presence of the jury, at which settlement counsel for the parties, or the defendant if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court, and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel, or the parties, shall specify and state the particular ground on which an instruction is objected to, and it shall not be sufficient to object generally that the instruction does not state the law, or is against the law, but the objection must specify particularly wherein the instruction is insufficient, or does not state the law, or what particular clause therein is objected to.

The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or positively refuse to do so, or give the instruction with modification, and shall mark or

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endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part, and in like manner those refused or modified, and if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.

The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court, together with modifications made therein, and the ruling of the court thereon.

(e) When the instructions have been passed upon and settled by the court, and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.

(f) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge *or jury*, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case."

Section 19. Section 95-2003, R.C.M. 1947, is amended to read as follows:

"**95-2003. Change of place of trial.** (a) The defendant or prosecution, before trial, may move for a change of place of trial on the ground that there exists in the *county* in which the charge is pending such prejudice that a fair trial cannot be had in such *county*.

(b) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(c) If the court determines that there exists in the *county* where the prosecution is pending such prejudice that a fair trial cannot be had it shall transfer the cause to any other court of competent jurisdiction in any *county* where a fair trial may be had."

Section 20. Section 95-2005, R.C.M. 1947, is amended to read as follows:

"**95-2005. Formation of trial jury.** (a) Number of Jurors. A jury in justice or police court shall consist of six (6) persons, but the parties may agree to a number less than six (6).

(b) Formation of Trial Jury. The county jury commission, at the time of preparing the district court jury list, shall prepare a jury list for each justice and police court within the county. Each list shall consist of resi-

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dents of the appropriate *county*, city or town. Such list shall be selected in any reasonable manner which shall ensure fairness, and it shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The list shall be filed in the office of the clerk of the district court and the appropriate list shall be posted in a public place in each such *county*, city or town, and such list shall comprise the trial jury list for the ensuing year for such *county*, city or town.

Trial jurors shall be summoned from the jury list by notifying each orally that he is summoned and of the time and place at which his attendance is required.

The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney or the prosecuting attorney if the court believes such examination to be improper.

Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in section 95-1909(d) (2) of this code. Each defendant shall be allowed three (3) peremptory challenges and the state shall be allowed the same number of peremptory challenges as all of the defendants."

Section 21. **Repealer.** Sections 93-6802, 93-6804, 93-6807 and 93-6808, R.C.M. 1947, are repealed.

Approved April 14, 1975.

CHAPTER NO. 421

AN ACT AMENDING SECTION 41-2303, R.C.M. 1947, TO INCREASE THE MINIMUM WAGE FOR EMPLOYEES IN THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-2303, R.C.M. 1947, is amended to read as follows:

"**41-2303. Compensation.** (a) Except as may otherwise be provided pursuant to this act, every employer shall pay to each of his employees wages at a rate not less than *provided in subsections (1) and (2)* save and except for farm workers as herein defined:

(1) *One* dollar *eighty* cents *($1.80)* an hour for the first year from the effective date of this act;

(2) *Two dollars ($2.00)* an hour for the second year from the effective date of this act and thereafter.

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(b) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-½) times the hourly wage rate at which he is employed. No overtime provision shall apply for farm workers. Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging or other facilities shall not employ said students for a work week longer than forty-eight (48) hours, unless such students receive compensation for their employment in excess of forty-eight (48) hours in a work week at a rate of not less than one and one-half (1-½) times the hourly wage rate at which they are employed.

(c) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of eight hours per day and other seasonal periods requiring working hours substantially less than eight hours per day the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to: (1) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him. The total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked, or (2) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(1) four hundred *twenty* dollars *($420)* a month for the first year from the effective date of this act*;*

(2) four hundred *sixty* dollars *($460)* a month for the second year from the effective date of this act *and thereafter.*"

Approved April 14, 1975.

CHAPTER NO. 422

AN ACT AMENDING SECTIONS 84-5211, 84-5212, 84-5214, AND 84-5215, R.C.M. 1947, TO UPDATE ARCHAIC LANGUAGE AND TO INCREASE THE MAXIMUM PERMISSIBLE LIMITS OF THE SPECIAL LEVIES ON LIVESTOCK USED TO FUND THE DEPARTMENT OF LIVESTOCK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-5211, R.C.M. 1947, is amended to read as follows:

"**84-5211. Limitation of levies — livestock moneys.** The amount of such levy shall not in any event exceed *two (2) mills* upon the assessed

valuation of sheep and *three (3)* mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the *brands-enforcement functions of the department of livestock*, including salaries, office expense, detective expense, expense of prosecution, travel, and all incidental expense, and a separate levy of not exceeding *three (3)* mills on all livestock for the use of the *animal health functions of the department of livestock* to be placed in the earmarked revenue fund for the payment of indemnity for animals slaughtered, and for salaries and expenses incurred in investigating, controlling and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance; provided further that the state treasurer and state controller, at the written request of the *department of livestock* shall set aside in a separate account in the earmarked revenue fund such moneys as may be available and requested, which moneys shall be expended only when the *department of livestock* determines that a livestock disease emergency exists requiring its expenditure, and they shall then be expended for such purposes as the *department of livestock* may order and direct."

Section 2. Section 84-5212, R.C.M. 1947, is amended to read as follows:

"**84-5212. Use of moneys arising from taxes prescribed in preceding section.** The money received from the tax levied on sheep, as provided in the first part of the preceding section, shall be placed to the credit of the earmarked revenue fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expense of the *brands-enforcement functions of the department of livestock*, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the earmarked revenue fund, to be used for like purposes *by the department of livestock.* The moneys received from the tax levied by the second division of the preceding section, shall be placed in the earmarked revenue fund, to be used *for* the *animal health functions of the department of livestock* for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith."

Section 3. Section 84-5214, R.C.M. 1947, is amended to read as follows:

"**84-5214. Levy for bounty moneys — use of proceeds.** The department of revenue shall, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1 ½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys

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received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the *department of livestock*, and thereafter approved by said *department*, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the *department of livestock*. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the *department* in cooperation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the *department* and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys."

Section 4. Section 84-5215, R.C.M. 1947, is amended to read as follows:

"**84-5215. Bounties, when paid.** The *department of livestock* may pay *a* bounty for the destruction of wild animals at *those* times of the year they *consider* advisable."

Approved April 14, 1975.

CHAPTER NO. 423

AN ACT TO EXTEND THE STATUTE OF LIMITATIONS ON DAMAGE TO REAL PROPERTY CAUSED BY OIL OR GAS OPERATIONS; AMENDING SECTION 93-2607, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-2607, R.C.M. 1947, is amended to read as follows:

"**93-2607. Two-year limitation.** Within two years:

1. An action upon a liability created by statute other than a penalty or forfeiture.

2. An action for injury to or for waste or trespass on real or personal property; provided that, when the waste, trespass *or injury* is committed by reason of underground work upon any mining claim *or seismic exploration, location, spacing, drilling, equipping, producing, or other operation related to exploration or production of oil, gas, water, geothermal, or other minerals*, the cause of action shall not be deemed to have accrued until

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the discovery by the aggrieved party of the facts constituting such waste, trespass, *or injury.*

3. An action for taking, detaining, or injuring any goods or chattels including actions for the specific recovery of personal property.

4. An action for relief on the ground of fraud or mistake, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

5. An action for killing or injuring stock by a railroad corporation or company."

Approved April 14, 1975.

CHAPTER NO. 424

AN ACT TO PROVIDE FOR THE DETERMINATION OF INHERITANCE TAX INVOLVING LIFE ESTATES, JOINT TENANCIES, AND OTHER TAXABLE INTERESTS WHERE NO PERSONAL REPRESENTATIVE IS APPOINTED; AMENDING SECTIONS 91-4415 AND 91-4418, R.C.M. 1947, RELATING TO THE PAYMENT OF INHERITANCE TAXES; AND REPEALING SECTIONS 91A-3-1205, AND 91-4460 THROUGH 91-4467, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 91-4469 that reads as follows:

91-4469. Inheritance tax — joint tenancies — life estates. (1) If a decedent dies, leaving no property which requires the appointment of a personal representative, but:

(a) was the owner of a life estate which terminated by reason of the death of such person; or

(b) was the owner with another or others as a joint tenant with right of survivorship, and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax by reason of the death of such person; then any such remainderman, surviving joint tenant, or other interested party shall file with the department of revenue evidence of the instruments by which each such life estate, joint tenancy, or other interest was created requiring determination of inheritance tax, together with a verified application, in form prescribed by the department containing the following information:

(i) Name, address and interest of applicant.

(ii) Name, date of death, age, and domicile of decedent at death.

(iii) Description and fair market value of decedent's interest at date of death in property requiring the determination of inheritance tax including the name, address, age, and relationship to decedent of all remaindermen, surviving joint tenants, possessors, or such other information as shall be required for the determination of inheritance tax by reason of decedent's death; including an appraisal or other proof of fair market value if required by the department of revenue.

(iv) Statement that decedent died leaving no property requiring appointment of a personal representative.

(v) A statement of inheritance tax due to the state of Montana by reason of decedent's death.

(2) Upon receipt of the original application, the department of revenue shall:

(a) endorse on each original the word "filed" and the month, day and year of the filing thereof;

(b) upon consideration of the application and determination of the inheritance tax by the department of revenue, issue a certificate showing the inheritance tax, if any, due the state of Montana by reason of the death of the decedent;

(c) affix one of the certificates to the original application on file with the department of revenue, and affix one of such certificates to a certified copy of the original of the application and mail the same to the applicant or his attorney.

(3) The inheritance tax as determined shall be paid to the county treasurer for transmittal to the state treasurer as provided by law. Upon payment of the tax as determined, the county treasurer shall receipt therefor upon the certificate of the department of revenue and shall issue and distribute duplicates thereof as required by law.

(4) If an interest in real property is involved, a certified copy of the original application together with (a) the certificate referred to in subsection (2) (c) above, and (b), the receipt, if any, referred to in subsection (3) above, shall be filed with the clerk and recorder of the county in which the real property, or any part thereof, is situate. Additional copies of the application and attachments certified by the department of revenue shall be filed in each county within the state of Montana wherein real property involved is situate.

(5) The certificate with the receipt, if any, provided for in subsection (3) above, shall constitute a release of any lien, for inheritance taxes due the state of Montana by reason of the death of the decedent and shall constitute prima facie evidence of the termination of such joint tenancy or other transfer of ownership.

(6) If disputes exist as to tax computation, they shall be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.

Section 2. Section 91-4415, R.C.M. 1947, is amended to read as follows:

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"**91-4415. When payment due — lien of tax — liability for payment — place of payment — receipts — receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten (10) years from the time of the death of the decedent, whether said death occurred before or after the effective date of this act, unless sooner paid, and the person to whom the property is transferred and the *personal representatives* and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state department of revenue for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided *or to the treasurer of the county of residence of the decedent if a court proceeding is not involved*, and if paid to the county treasurer said treasurer shall receipt therefor, making five copies thereof, and distribute said copies as follows: Original receipt, to the clerk of the district court; first copy, to the *personal representative*, trustee, or person paying said tax; second copy, attached to and mailed with the report required by section 91-4450, as amended, to the state department of revenue; third copy, to the county clerk and recorder; fourth copy, retained by the treasurer on file in his office. The copy of the receipt given to the *personal representative* or trustee shall be a proper voucher in the settlement of his accounts.

No *personal representative* or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419."

Section 3. Section 91-4418, R.C.M. 1947, is amended to read as follows:

"**91-4418. Refunding of tax — when authorized — manner of refunding — advance payment of tax for relief from penalty and interest.** If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the *personal representative* or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the *county treasurer*, who shall receipt therefor, at any time before the same is determined by the *department of revenue*, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. In the event the person making payment has done so in accordance with

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the provisions of section 91-4416, pertaining to the allowance of a five per cent (5%) discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the five per cent (5%) discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by the paying the amount estimated by the taxpayer to *the county treasurer.* The money shall be paid to the *county treasurer* who must deposit same with the state department of revenue. The *county treasurer* shall pay the collections to the state department of revenue on or before the fifth day of the month following the collection. As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the state department of revenue."

Section 4. If Senate Bill No. 223 of the Forty-fourth Legislature is enacted into law, nothing in this act may be construed to repeal or supersede the provisions of Senate Bill No. 223 as enacted.

Section 5. Sections 91A-3-1205, and 91-4460 through 91-4467, R.C.M. 1947, are repealed.

Approved April 14, 1975.

CHAPTER NO. 425

AN ACT TO PROVIDE LOCALLY BASED INDIAN TEACHER-TRAINING PROGRAMS TO BE ADMINISTERED BY LOCAL SCHOOL DISTRICTS OR INDIAN NONPROFIT CORPORATIONS IN CO-OPERATION WITH THE UNITS OF HIGHER EDUCATION IN MONTANA; AND PROVIDING THAT THIS ACT SHALL BE REPEALED JULY 1, 1977.

WHEREAS, (1) The Native People of the state of Montana desire to perpetuate their language and other aspects of their culture;

(2) Understanding of Indian culture can best be gained from teachers of Indian descent in the classroom who are trained and employed in public schools on the various reservations;

(3) The state of Montana recognizes that the teacher turnover rate on reservations is excessive;

(4) More persons of Indian descent should be trained to fill staff vacuums existing within the schools on Montana Indian reservations and in Great Falls;

(5) Indian teachers trained locally make the best teachers because they know and uniquely understand the needs of the Indian children with whom they share a common heritage;

(6) The best method of teacher-training in these instances is to provide realistic training based upon practical experience combined with learning theory in schools serving the Indian population;

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(7) The state of Montana has an obligation to help meet the affirmative action policy of more Indian teachers in the schools of the state of Montana;

(8) The state of Montana must act on the recommendations of the Commission on Post-Secondary Education as they pertain to Native Americans;

(9) There is a specific need to assist teacher training programs on the Rocky Boy, Crow and Northern Cheyenne reservations which have a total of forty-eight (48) persons who are one (1) year or less away from graduation from teacher-training colleges;

(10) There is a specific need for teacher-training programs for the Landless Indians at Great Falls, Montana;

(11) The state of Montana recognizes the need to assume the funding of teacher-training programs now in operation on the Rocky Boy, Crow and Northern Cheyenne reservations and which will not be funded by the Congress of the United States after June 30, 1975.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-6133 that reads as follows:

75-6133. Short title — establishment local Indian teacher training. This act shall be known as the "Indian Teacher-Training Act of 1975". A system to provide locally based Indian teacher-training programs, to be administered by local school districts or by Indian nonprofit corporations in cooperation with any system of accredited higher education in the state of Montana, is established for the purpose of implementing Article X, section 1 of the Montana constitution which commits the state in its educational goals to the preservation of the Indian cultural integrity.

Section 2. There is a new R.C.M. section numbered 75-6134 that reads as follows:

75-6134. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Indian" means a person who is an enrolled member of one of the various Indian tribes of Montana.

(2) "School district" means public school districts organized under the school laws of the state of Montana, and any education systems established by any Indian tribe of the state of Montana.

(3) "Indian nonprofit corporation" means a nonprofit corporation incorporated under the laws of Montana, under federal laws of the United States, or, under the laws of Indian tribes of Montana, the board of directors of which has a majority of persons of Indian descent.

(4) "Landless Indian" means persons of Chippewa and/or Cree descent

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who trace their ancestry to persons appearing on the Roe Cloud Roll and those persons recognized as Indian by the landless Chippewa and Cree community.

Section 3. There is a new R.C.M. section numbered 75-6135 that reads as follows:

75-6135. Grantee agencies. The following school districts and nonprofit corporations shall receive the available funds and provide the locally based teacher-training programs in cooperation with any unit of higher education in the state of Montana.

(1) School District #87, Rocky Boy Reservation.

(2) Education Commission, Northern Cheyenne Reservation.

(3) Crow Education Commission on the Crow Reservation, and Northern Cheyenne Education Commission on the Northern Cheyenne Reservation.

(4) Montana United Scholarship Service, Inc., Great Falls, Montana, who shall administer the program for the landless Indians.

Section 4. There is a new R.C.M. section numbered 75-6136 that reads as follows:

75-6136. Administration of Indian teacher-training program. (1) The Montana Indian teacher-training program shall be administered by the local designee school districts or nonprofit Indian corporations in cooperation, by contract, with the Montana university system or any accredited private college or system of higher education established by any Indian tribe of the state of Montana.

(2) The designee school district may, if it does not have a majority of Indians on the board of trustees, establish an Indian education committee which shall be involved in the planning, implementation, administration and evaluation of the program. The Indian education committee shall approve all aspects of the Indian teacher-training program.

(3) Funds, to be distributed annually to the designee school districts or nonprofit Indian corporations, in order to establish the teacher-training programs, shall be administered by the office of the commissioner of higher education.

(4) The office of the commissioner of higher education may provide a staff member of Indian descent to assist in the administration of the programs.

Section 5. This act is repealed on July 1, 1977, and all unexpended funds will revert to the general fund.

Approved April 14, 1975.

CHAPTER NO. 426

AN ACT AMENDING SECTION 82-1202.1, R.C.M. 1947, PROVIDING

FOR LICENSING OF BUSINESSES WHICH MANUFACTURE, SELL, SERVICE AND INSTALL FIRE EXTINGUISHERS, FIRE ALARMS, AND FIRE EXTINGUISHING SYSTEMS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1202.1, R.C.M. 1947, is amended to read as follows:

"82-1202.1. Rules promulgated by state fire marshal — adoption of other standards — providing for licensing — providing for a penalty for violation. (1) Rules promulgated by the state fire marshal by authority of section 82-1202, R.C.M. 1947, shall be reasonable and calculated to effect the purposes of this act. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance or use of the following: structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibres; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of administration and filing with the secretary of state.

(3) Standards of the National Fire Protection Association, United States Bureau of Standards, American Insurance Association Standards may be adopted in whole or in part by reference.

(4) A natural person must obtain a certificate of registration from the state fire marshal prior to servicing or installing of fire extinguishers, fire alarm systems or fire extinguishing systems. A person or firm must obtain from the fire marshal a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems, prior to engaging in such business.

(a) Applications for licenses, permits or certificates, shall be made on a form prescribed by the state fire marshal. The fire marshal shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed, and who pays the required fee. The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal, and who pays the required fee. The fire marshal shall issue a sales permit to an applicant who submits the information required by the fire marshal on the application form, who submits satisfactory proof

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that he deals only in equipment that meets the standards and regulations of the state fire marshal, and who pays the required fee.

(b) The state fire marshal may conduct inspections, examinations or hearings prior to the issuance of licenses, permits or certificates. The state fire marshal may revoke, suspend or refuse to issue a license, permit or certificate for violation of the provisions of this chapter or any rules and regulations promulgated by the fire marshal under applicable law.

(c) The state fire marshal or his representative shall charge a fee, not to exceed a total of twenty-five dollars ($25) for the inspection and issuance of licenses, permits and certificates.

(d) All fees collected under this section shall be paid into the general fund.

(5) Any person violating any rule made under the provisions of this section shall be guilty of a misdemeanor."

Section 2. This act is effective on its passage and approval.

Approved April 14, 1975.

CHAPTER NO. 427

AN ACT TO ENCOURAGE REHABILITATION, RENOVATION AND RECONSTRUCTION OF REAL ESTATE IMPROVEMENTS BY PLACING THE INCREMENTAL INCREASE IN THE VALUE OF SUCH IMPROVEMENT ATTRIBUTABLE TO SUCH REPAIRING, MAINTENANCE OR IMPROVING EXISTING IMPROVEMENTS INTO A NEW CLASS FOR PROPERTY TAXATION PURPOSES; AMENDING SECTIONS 84-301 AND 84-302, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machin-

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ery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, *except improvements included in Class Nine,* and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

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(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

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(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining or improving existing improvements.

Class *Ten.* All property not included in the *nine (9)* preceding classes."

Section 2. Section 84-302, R.C.M. 1947, is amended to read as follows:

"84-302. Basis for imposition of taxes. As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100%) of its true and full value.

Class 2. Twenty per cent (20%) of its true and full value.

Class 3. Thirty-three and one-third per cent (33 ⅓%) of its true and full value.

Class 4. Thirty per cent (30%) of its true and full value.

Class 5. Seven per cent (7%) of its true and full value.

Class 6. As specified in section 84-308, R.C.M. 1947.

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Fifteen per cent (15%) of its true and full value.

Class 9. Six percent (6%) of the true and full value for the first full year following completion of the repair, maintenance or improving of existing improvements; twelve percent (12%) of the true and full value for the second full year following completion of the repair, maintenance or improving of existing improvements; eighteen percent (18%) of the true and full value for the third full year following completion of the repair, mainte-

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nance or improving of existing improvements; twenty-four percent (24%) of the true and full value for the fourth full year following completion of the repair, maintenance or improving of existing improvements; and thirty percent (30%) for the fifth full year following completion of the repair, maintenance or improving of existing improvements and for every year thereafter.

Class *10.* Forty per cent (40%) of its true and full value."

Section 3. The department of revenue shall advise each real property owner to whom it mails property tax notices in November 1975 of the provisions contained in Class Nine (9) of this act.

Approved April 14, 1975.

CHAPTER NO. 428

AN ACT REGARDING THE QUALIFICATIONS OF THE SUPERINTENDENT OF THE WARM SPRINGS STATE HOSPITAL; AMENDING SECTION 80-2402, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2402, R.C.M. 1947, is amended to read as follows:

"**80-2402. Qualifications of superintendent.** The superintendent of the Warm Springs state hospital shall be *either: (1)* a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry *and a minimum of one (1) year full-time experience in hospital administration, or (2) a person* with a master's degree *in hospital administration;* and *shall have* a minimum of three (3) years' full-time experience in hospital administration."

Approved April 14, 1975.

CHAPTER NO. 429

AN ACT TO PROVIDE FOR A HEARING ON AN ALLEGED VIOLATION OF YOUTH'S AFTERCARE AGREEMENT, AMENDING SECTION 80-1414 AND 80-1416, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1414, R.C.M. 1947, is amended to read as follows:

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"**80-1414. Aftercare agreement to be signed by youth before release from juvenile facility to custody of department — agreement to contain notice of youth's right to hearing on violation of agreement.** A *youth* released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:

(1) A statement of the terms and conditions of his release, including a list of the acts, which, if committed by the youth, may result in his return to the facility; and

(2) A statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in section 80-1414.1, R.C.M. 1947, before he may be returned to the facility. The youth, upon advice of an attorney, may waive his right to a hearing."

Section 2. There is a new R.C.M. section numbered 80-1414.1 that reads as follows:

80-1414.1. Hearing on alleged violation of aftercare agreement — appeal to the district court. (1) When an allegation of a violation of the terms and conditions of a youth's aftercare agreement is made by the department or by any person, the youth shall be granted a hearing at or near the site of the alleged violation within ten (10) days after the day that the allegation was made to determine:

(a) Whether the youth committed the violation; and

(b) Whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released.

(2) With regard to this hearing, the youth shall be given:

(a) Written notice of the alleged violation of his aftercare agreement, including notice that the purpose of the hearing is to determine whether he has committed the violation, and, if so, whether or not the violation is of such a nature that he should be returned to the juvenile facility from which he was released;

(b) Disclosure of the evidence against him;

(c) Opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him, and to show that there are compelling reasons which justify or mitigate the violation. Either party shall have the power to issue subpoenas to witnesses;

(d) The right to confront and cross-examine adverse witnesses;

(e) The right to be represented by an attorney; and

(f) A record of the hearing which may be taken by tape recorder and transcribed on appeal.

(3) The department shall appoint a referee who shall not be an employee of the department to conduct the hearing. The department shall adopt rules and regulations necessary to effect a prompt and full review.

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(4) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the alleged violation, and that there are no compelling reasons which justified or mitigated the violation, the department may return the youth to the juvenile facility from which he was released. The referee shall give a written decision to the youth listing the reasons for his decision.

(5) Either the department or the youth may appeal from the decision at the hearing to the district court of the county in which the alleged violation occurred, by serving and filing a notice of appeal with the court within ten (10) days of the decision. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the board and shall proceed to a prompt hearing on the appeal, based upon the record on appeal. The decision of the board shall not be altered except for abuse of discretion or manifest injustice.

(6) Pending the hearing on a violation, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others; or he may abscond or be removed from the community in which the alleged violation occurred. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in sections 10-1211, and 10-1214, R.C.M. 1947, except that detention pending a hearing on alleged violation may not be for longer than seventy-two (72) hours.

Section 3. Section 80-1416, R.C.M. 1947, is amended to read as follows:

"**80-1416. Detention of youth who violates aftercare agreement —delivery on request to department.** A *youth* who violates the terms and conditions of his aftercare agreement may be detained, by the department or by a law officer of the state, county, or city of the state, upon certificates in writing to the officer by the department to the effect that the *youth* has violated the terms and conditions of his aftercare agreement."

Approved April 14, 1975.

CHAPTER NO. 430

AN ACT AMENDING SECTION 87-109, R.C.M. 1947, SPECIFYING THE METHOD BY WHICH THE STATE, POLITICAL SUBDIVISIONS, INSTRUMENTALITIES, AND LOCAL GOVERNMENTAL UNITS ARE TO MAKE PAYMENTS TO THE EMPLOYMENT SECURITY DIVISION, MONTANA STATE DEPARTMENT OF LABOR AND INDUSTRY; AND ESTABLISHING FLUCTUATING RATES OF RETURN BASED UPON THE TRUST FUND BALANCE; REPLACING CHARGEBACK FACTOR WITH QUARTERLY PAYROLL DECLINE FACTOR; CHANGING THE TAXABLE WAGE BASE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 87-109, R.C.M. 1947, is amended to read as follows:

"**87-109. Contributions.** (a) Payment. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages, as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the division for the fund in accordance with such regulations as the division may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half (½) cent or more, in which case it shall be increased to one (1) cent.

(b) Rate of contribution.

(1) Each employer shall pay contributions at the rate of three and one-tenth per centum (3.1%) of wages, as defined in section 87-149 (c) paid by him with respect to such employment, except as provided in subsection (c) of this section.

Nonprofit organizations defined in section 501 (c) (3) of the federal internal revenue code and which are exempt from tax under section 501 (a) of such code may elect to make payments in lieu of contributions; the state and its political subdivisions specifically covered by this act and those electing coverage shall make payments in lieu of contributions.

A group of nonprofit organizations may elect with the approval of the division to act as a group in fulfilling the requirements of this subsection or of this act.

(2) Employers required or eligible to elect to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half (½) of the amount of extended benefits paid to individuals based on wages paid by such employing unit. If benefits paid an individual are based on wages paid by both such employer and one (1) or more other employers, the amount payable by such employer to the fund shall bear the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers. If the base period wages of an individual include wages from more than one (1) such employer, the amount to be paid into the fund with respect to the benefits paid to such individual shall be prorated among the liable employers in proportion to the wages paid to such individual by each such employer during the base period. The amount of payment required from such employers shall be ascertained by the division quarterly and shall become due and payable by such employer quarterly as directed in this act. Penalty and interest for delinquency shall be assessed such employers as specified in section 87-135.

(3) Any nonprofit organizations as defined in subsection (b) (1) of this

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section electing to become liable for payments in lieu of contributions must file with the division a written notice of its election not later than thirty (30) days immediately following the date of the determination of subjectivity to this act. This election shall be for a period of not less than two (2) years.

(A) Any nonprofit organization may terminate its election to make payments in lieu of contributions after two (2) calendar years from the effective date of such election by filing a written notice with the division not later than thirty (30) days prior to the beginning of the taxable year for which such termination is effective.

(B) Any nonprofit organization defined in subsection (b) (1) of this section which has been paying contributions for at least two (2) taxable years may change to payments in lieu of contributions by filing with the division a written notice to that effect within thirty (30) days before the beginning of the taxable year for which the change is effective.

(C) If the nonprofit organization is delinquent in making payments in lieu of contributions, the division may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(4) Payments in lieu of contributions by the state and its political subdivisions shall be an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state and its political subdivisions. The method of determining benefits attributable shall be the same as that set forth in subsection (b) (2) of this section.

(A) From the date of subjectivity to this act through December 31, 1974, payments shall equal three-tenths percent (.3%) of total wages paid employees for services in employment during the calendar quarter. Employing units covered under this act after December 31, 1974, shall make payments equal to four-tenths percent (.4%) of total wages paid employees for services in employment during the calendar quarter.

(B) The rates shall be adjusted after three (3) calendar years of subjectivity and the rate shall equal a calculated percentage of total wages paid. Such percentage being derived by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by September 30 immediately preceding the computation date by total wages paid by said employing unit through December immediately preceding the computation date.

(C) When an employing unit becomes eligible for a rate adjustment the division shall determine whether the total payments for the three (3) calendar years and subsequent calendar years is less than, or in excess of, the total sum of benefits charged to the employer accounts. Each employing unit whose total payments for the period are less than the benefit charges shall be liable for payment of the unpaid balance. Such amount shall be due within thirty (30) days from the notice given by the division. If the total payments exceed the amount so determined for the period, the excess may, at the discretion of the division, be refunded or retained as part payments which may be required from the next calendar year.

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(c) Experience rating.

The division shall for each calendar year, classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the *experience factor* which shall apply to him throughout the calendar year in order to reflect said experience and classification. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the division shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in total payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) *average quarterly percentage declines in total payrolls for the last three (3) years prior to computation date.* The computation date is hereby fixed as of the close of business on June 30 of the preceding calendar year.

Wages shall be adjusted in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose factory or establishment there was in any year in the qualifying period of such employer, a stoppage of work due to a strike which caused a decrease in such employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease or decreases when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio. The average quarterly variation ratio shall be computed by

(1) dividing the payroll, or if adjusted, the adjusted payroll, for that quarter in each of the prior years of an employer's qualifying period which corresponds to the respective quarter in which a stoppage of work due to a strike existed, by the payroll or adjusted payroll for the respective quarter immediately preceding such corresponding quarter, and

(2) totaling the ratio thus obtained and dividing by the number of such ratios.

EMPLOYER CLASSIFICATIONS:

Employers, for the second calendar quarter of the calendar year 1975 and thereafter, shall be grouped into fourteen (14) classes, to be designated as classes I through XIV, respectively, in accordance with their experience factor.

Each employer shall be in the class listed below on the same horizontal line on which his experience factor appears, and each qualified employer shall pay the contribution rate assigned to his class pursuant to the provisions of reserve to total wages.

Employer's Experience Factor	*Class*
30-29	*I*
28-27	*II*
26-25	*III*
24-23	*IV*
22-21	*V*
20-19	*VI*
18-17	*VII*
16-15	*VIII*
14-13	*IX*
12-11	*X*
10-9	*XI*
8-7	*XII*
6-(-10)	*XIII*
Age	*XIV*

RESERVE TO TOTAL WAGES - CLASS RATES:

Class rates shall be assigned based upon the percent of average trust fund balance of the twelve (12) month period prior to the computation date to total wages in covered employment for the same period.

CLASS RATES

Reserve Percent of Total Wage	*Class 1*	*Class 2*	*Class 3*	*Class 4*	*Class 5*	*Class 6*	*Class 7*
At least 2.50%	*.5*	*.7*	*.9*	*1.1*	*1.3*	*.15*	*1.7*
2.25 to 2.49%	*.7*	*.9*	*1.1*	*1.3*	*1.5*	*1.7*	*1.9*
2.00 to 2.24%	*.9*	*1.1*	*1.3*	*1.5*	*1.7*	*1.9*	*2.1*
1.75 to 1.99%	*1.1*	*1.3*	*1.5*	*1.7*	*1.9*	*2.1*	*2.3*
1.50 to 1.74%	*1.3*	*1.5*	*1.7*	*1.9*	*2.1*	*2.3*	*2.5*
1.25 to 1.49%	*1.5*	*1.7*	*1.9*	*2.1*	*2.3*	*2.5*	*2.7*
Less than 1.00%	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*

Reserve Percent of Total Wage	*Class 8*	*Class 9*	*Class 10*	*Class 11*	*Class 12*	*Class 13*	*Class 14*
At least 2.50%	*1.9*	*2.1*	*2.3*	*2.5*	*2.7*	*2.9*	*3.1*
2.25 to 2.49%	*2.1*	*2.3*	*2.5*	*2.7*	*2.9*	*3.1*	*3.1*
2.00 to 2.24%	*2.3*	*2.5*	*2.7*	*2.9*	*3.1*	*3.1*	*3.1*
1.75 to 1.99%	*2.5*	*2.7*	*2.9*	*3.1*	*3.1*	*3.1*	*3.1*
1.50 to 1.74%	*2.7*	*2.9*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*
1.25 to 1.49%	*2.9*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*
Less than 1.00%	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*

The division shall determine the *experience factor* applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be three and one-tenth per centum (3.1%) unless and until there have been three (3) years prior to the computation date throughout which the employer has paid contributions at the maximum tax rate set by law for each of such years and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the division and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year. Upon payment of past-due contributions the division shall, for the current year, compute a rate for the next succeeding quarter following the payment.

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(2) The classified contribution rates for the calendar year 1969, and thereafter, except as hereinafter provided, shall be: five-tenths of one per centum (.5%), seven-tenths of one per centum (.7%), nine-tenths of one per centum (.9%), one and one-tenth per centum (1.1%), one and three-tenths per centum (1.3%), one and five-tenths per centum (1.5%), one and seven-tenths per centum (1.7%), one and nine-tenths per centum (1.9%), two and one-tenth per centum (2.1%), two and three-tenths per centum (2.3%), two and five-tenths per centum (2.5%), two and seven-tenths per centum (2.7%), two and nine-tenths per centum (2.9%), and three and one-tenth per centum (3.1%).

(3) The division shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, *payroll* experience and ratings to the successor employing unit or units.

(4) The division shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the division for a redetermination or hearing thereon within thirty (30) days after receipt of such notice.

(5) "Annual total payroll" means the total of the four (4) quarters of total payrolls of an employer preceding the computation date as fixed herein.

(d) The provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars ($3,000) by an employer to an employee with respect to employment during any calendar year preceding the year 1972.

Payment of contributions shall apply only to wages paid up to and including four thousand two hundred dollars ($4,200) by an employer to an employee with respect to employment during the calendar *years* 1972, *1973, 1974 and the first calendar quarter of year 1975. For the second calendar quarter of the calendar year 1975 and thereafter the taxable wage base shall be established for each year based upon the reserve per cent of total wages or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher.*

Reserve Percent of Total Wages	*Taxable Wage Base*
2.50% and above	*$4,200.00*
2.25 to 2.49%	*4,400.00*
2.00 to 2.24%	*4,600.00*
Less than 2.00%	*4,800.00*

(e) Contribution appeals.

Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund or the charging of benefit payments to employers

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making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy shall be deemed to be the decision of the division. The division or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pursuant to such review shall be deemed to be the final decision of the division unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107 (c)."

Section 2. This act is effective on April 1, 1975.

Approved April 14, 1975.

CHAPTER NO. 431

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF BUSINESS REGULATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-109, R.C.M. 1947, is amended to read as follows:

"5-109. Definition of words and terms. *Unless the context requires otherwise, in this act:*

(1) "Capital," "capital stock," and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(2) "Surplus" means a fund paid in or created *under* this act by a bank from its net earnings or undivided profits, which when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(3) "Undivided profits" means the credit balance of the profit and loss account of *a* bank.

(4) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings" and against which all loss and other disbursement items are charged revealing "net earnings" which are then properly closed to "undivided profits accounts" or "undivided profits," out of which dividends are paid and reserves set aside.

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(5) "*Net* earnings" means the excess of the gross earnings of *a* bank over expenses and losses chargeable against *those* earnings during any one year.

(6) "*Time* deposits" means all deposits, the payment of which cannot legally be required within thirty (30) days.

(7) "*Demand* deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "*Consolidate*" and "merge" mean the same thing and may be used interchangeably in this act.

(9) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(10) "Board" means the state banking board provided for in section 82A-407."

Section 2. Section 5-202, R.C.M. 1947, is amended to read as follows:

"**5-202. Presentation of articles to department of business regulation — secretary of state to issue certificate — when body corporate.** *The* articles of agreement shall be presented to the *department of business regulation,* together with an application in writing in the form prescribed by the *department* for a certificate authorizing the proposed corporation to transact within this state the business specified *in the articles of agreement.* Upon the presentation of the articles of agreement, together with *the* application, the *department* shall ascertain whether the requisite capital of *the* bank has been subscribed and been paid up in cash. *It* shall also determine whether the corporation is being formed for any other *purpose* than the legitimate business contemplated by this act, or whether the public convenience and advantage will be promoted by the opening of *the* bank. *It shall determine* whether the corporate name assumed by *the* bank, by reason of the use of any one or more of the words "commercial," "trust," "savings," or "investment," in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this act *as to be likely to cause confusion. The department* shall also ascertain from the best sources of information at *its* command whether the character and general fitness of the persons named as stockholders command confidence of the community in which *the* bank is proposed to be located. The expenses of the *department* in making the examination required by this *section* shall be paid by the proposed bank, and payment shall be made in advance if required by the *department. All information gathered by the department under this section shall be transmitted to the board for its use in conducting hearings on applications for certificates of authorization.*"

Section 3. There is a new R.C.M. section numbered 5-202.1 that reads as follows:

5-202.1. Board to refuse or approve application. The board may refuse or approve an application for a certificate of authorization in accordance with sections 5-607 through 5-614.

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Section 4. Section 5-203, R.C.M. 1947, is amended to read as follows:

"**5-203. Filing of certificate and articles of agreement.** The articles of agreement, together with one of *the* certificates of authorization, issued by the *department*, shall be filed in the office of the clerk and recorder of the county in which is located the principal place of business of the proposed bank. *A* certified copy of the articles of agreement, together with the certificate of authorization, shall be filed with the secretary of state. Upon filing with the secretary of state the articles of agreement and the certificate of authorization, and paying the fee required for the filing of articles of incorporation, the secretary of state shall issue a certificate setting forth that *the* corporation has been duly organized, the amount of its authorized and subscribed capital, and the business in which it is to engage. *This* certificate shall be taken by all courts of this state as evidence of the corporate existence of *the* bank. The *persons* signing and acknowledging the articles of agreement, and their associates and successors, *are then* a body corporate with power of continual succession, and by *that* name they and their successors *are* entitled to have, possess, and enjoy all the rights and privileges conferred by this act."

Section 5. Section 5-208, R.C.M. 1947, is amended to read as follows:

"**5-208. Board of directors — qualifications, tenure, and vacancies.** The affairs of the bank shall be managed by a board of directors, not less than three (3) or more than eleven (11) in number, all of whom shall be stockholders of *the* bank and citizens of the United States, and of whom at least two-thirds (⅔) must be residents of *this* state. *A* person who *has* been convicted of a crime against the banking laws of the United States or of any state *may not* be elected a director. The directors shall be elected for a term of one (1) year at the annual meeting of the stockholders, which shall be held on the second Tuesday in January of each year. *If* the election *is* not *held* on the day fixed for the annual meeting, the corporation *may* not thereby be dissolved, but an election may be *held* at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday *of the following* January, or until others are elected and qualified. In case of death or resignation of one or more of *the* directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in *the* office, *that he* will not knowingly violate or permit a violation of any of the provisions of this act, *and* that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. *The* oaths shall be made in duplicate, one copy of which shall be transmitted to the *department* and filed in *its* office, and one copy shall be kept on file in the office of the bank."

Section 6. Section 5-210, R.C.M. 1947, is amended to read as follows:

"**5-210. Selection of officers and employees — meetings and minutes.** The board of directors *may* elect a president, one or more vice-presidents, cashier, and one or more assistant cashiers, and other officers and employees *which* they may from time to time *consider* to be to the best interest of the bank, and fix their compensation. The president and

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at least one vice-president shall be chosen from the board of directors. The board of directors shall also elect a secretary, who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. *The* minutes shall be read and approved at the *following* meeting of the board of directors, and the minutes of *the following* meeting shall show *that* fact. *The* minute-book shall be kept in the office of the bank at all times, and shall be presented to the *department* at the time of *its* examination of the books. *The department shall* include in *its* report of examination of *the* bank a statement of the dates on which *the* meetings were held since the last examination of *the* bank by *it*, and the names of the directors in attendance at each of *those* meetings. The board of directors of a bank must hold a meeting at least once a month. *A* person who *makes* a false entry in *the* book, or who *changes* or *alters an* entry made *in it, is* guilty of a misdemeanor."

Section 7. Section 5-214, R.C.M. 1947, is amended to read as follows:

"5-214. Change of place of business and number of directors authorized. *A* bank may, upon approval of the *board*, change its principal place of business from one place to another, in the same county, or in an adjacent county, within this state, and may increase or diminish the number of trustees or directors in the manner provided *in sections 5-215 through 5-217*."

Section 8. Section 5-216, R.C.M. 1947, is amended to read as follows:

"5-216. Certificate of proceedings — contents and effect. If, at the time and place specified in the notice provided for in section *5-215*, stockholders appear in person or by proxy representing not less than two-thirds (⅔) of all the shares of stock of the corporation, and organize by choosing one of the trustees or directors chairman of the meeting and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if two-thirds (⅔) of the votes representing all the *outstanding* capital stock have been cast in favor of increasing or diminishing the amount of capital stock, or of changing its corporate name, or of changing its principal place of business, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital stock actually paid in, the whole amount of debts and liabilities of the corporation, the amount to which the capital stock shall be increased or diminished, or the change in the corporate name of the corporation, or the change in the principal place of business, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and *the* certificate shall be acknowledged by the chairman. *The* certificate shall then be sent to the *department which* shall within thirty (30) days of receipt either approve or reject the application for change. The action of the *department* on *the* application *is* final. If *it* approves the *certificate it* shall notify the bank *at which time* the certificate shall be filed in the office of the county clerk and recorder of the county *in which* the bank is located and in the office of the secretary of state. Upon *the* filing, the change *is* effective."

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Section 9. Section 5-217, R.C.M. 1947, is amended to read as follows:

"**5-217. Change in number of directors — procedure — approval by department.** *(1) A* state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, *with* all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting, or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company. *However,* the number of directors *may* not at any time be less than three *(3)* or more than eleven *(11).*

(2) When a bank or trust company *decides* to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of *the* meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at *the* meeting under the articles of incorporation or amendments *to them,* and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the holding of *the* meeting. *In* addition, *the* notice must be published once a week for two consecutive weeks in a newspaper published in the county *where* the principal place of business of *the* corporation is situated. If no newspaper is published in the county it *is* not necessary to publish *the* notice. *However,* the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice.

(3) If at the time and place specified in the notice of *the* special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds *(⅔)* of all the shares of stock of the corporation appear in person or by proxy and vote in favor of *the* amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the amendment relative to the number of directors shall be prepared, certified and sworn to and filed with the *department. The department* shall, within thirty *(30)* days after the receipt *of the certificate,* either approve or reject the amendment. The action of the *department* on *the* amendment *is* final. If *it* approves the *amendment, it* shall notify the bank, whereupon the certificate with the *department's* approval attached *to it* shall be filed in the office of the county clerk and recorder of the county *in which* the bank is situated, and a certified copy *of it* shall be filed in the office of the secretary of state. Upon the filing of *the* certified copy with the secretary of state, the amendment *becomes* effective."

Section 10. Section 5-301, R.C.M. 1947, is amended to read as follows:

"**5-301. Dissolution and disincorporation.** Commercial banks, savings banks, trust companies, and investment companies may be dissolved in the manner provided by the laws of *this state* applicable to the

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dissolution of other corporations. *However, a* bank *or trust company may,* upon a vote of two-thirds (⅔) of its stockholders at a special meeting called for that purpose in accordance with *its* bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. *A* bank or trust company desiring to voluntarily liquidate shall *apply* to the *department of business regulation* for permission to so liquidate and, in addition to complying with the laws of *this* state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the *department* governing voluntary dissolution. The board of directors of *a* bank, whose stockholders have voted to place it in voluntary liquidation, shall appoint a liquidating agent to wind up the affairs of *the* bank. *The* liquidating agent, on authority of the board of directors, *may* execute deeds for the transfer of real property and do all things necessary to *carry out* the proper liquidation of *the* bank. Nothing in this section *prevents* the *department* from taking charge at any time when in *its* opinion the interest of creditors or stockholders is not being protected. *The* decision of the *department* in *these* matters *is* controlling."

Section 11. Section 5-403, R.C.M. 1947, is amended to read as follows:

"5-403. Scope of term "liquidating officer" — department of business regulation to file inventory with district court — report. The liquidating officer of a bank *may* decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements and liabilities and he may determine the question of the time when and the court where necessary *legal proceedings* shall be *conducted,* subject to the general provisions of law governing venue and place of trial. For the purposes of this section the term "liquidating officer" *includes* every person legally empowered to liquidate the business and affairs of a state bank whether the *liquidation is by the department of business regulation, its* deputies and agents and also *includes* all receivers of state banks qualified to liquidate a state bank under any law of *this state. The* provisions of this *chapter do* not impose any liability on *a* stockholder of a bank which is a member of the Federal Deposit Insurance Corporation. The *department* shall, within ninety (90) days after taking charge of an insolvent bank, *file* with the district court having jurisdiction a complete inventory of all of the property and assets of *the* insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, *and* notes, secured and unsecured. *It* shall *also* every six *(6)* months or *more often,* if required by the court, *file* with the court a report showing the conditions of the liquidation of *the* bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report *shall* contain other information the court *requires,* so that the court and the public may be apprised of the condition of *the* bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to *the* bank and the manner in which claims are being paid. *The* report and account shall be set for hearing upon *the* notice the court may require and if found to be correct shall be approved by the court."

Section 12. Section 5-504, R.C.M. 1947, is amended to read as follows:

"5-504. Real estate which banks may purchase, hold or convey.

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(1) A bank organized under the provisions of this act may purchase, hold, or convey real estate *which*:

(a) Is necessary for the proper transaction of its business, but it shall not invest an amount exceeding fifty per cent (50%) of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, *equipment* and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) Is mortgaged to it in good faith by way of security for loans previously made or moneys due to the corporations;

(c) Is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) It purchases at sales under judgments, decrees, or mortgages held by the company.

(2) Real estate acquired in the manner set forth in *subsections 1(c)* and *1(d) of this section may* not be held longer than five *(5)* years from the date of acquisition, unless special written permission to do so *is* granted by the *department of business regulation. The* real estate *shall* be carried on the books of the bank for an amount not greater than *its* cost to the bank, including costs of foreclosure and other expenses of acquiring title."

Section 13. Section 5-506, R.C.M. 1947, is amended to read as follows:

"**5-506. Limitation on real estate loans.** *(1) A* commercial bank organized under the laws of *this* state may make real estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase *an* obligation so secured when the entire amount of *the* obligation is sold to the bank. *The* amount of *the* loan *may* not exceed fifty *percent* (50%) of the appraised value of the real estate offered as security, and *the* loan *may not* be made for a longer period than five (5) years, except that:

(a) The loan may be made in an amount not to exceed sixty *percent* (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if *the* loan is secured by an amortized mortgage, deed of trust, or *similar* instrument, under the terms of which the installment payments are sufficient to amortize forty *percent* (40%) or more of the principal of the loan within not more than twenty (20) years; and

(b) A commercial bank *may not* make *those* loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of sixty *percent* (60%) of the amount of its time and saving deposits, whichever is greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, *are* not loans secured by real estate within the meaning of this *section*, but shall be classed as ordinary commercial loans. *A* commercial bank *may not* invest in or be liable on any *of those* loans in an aggregate amount in excess of fifty *percent* (50%) of its actually paid-in and unimpaired capital.

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(3) Loans made to establish rural or commercial businesses which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment *has* been made by a federal reserve bank or in which *an agency of the federal government* cooperated or purchases a participation in, *are* not subject to the restrictions or limitations of this *section* upon loans secured by real estate. *A* commercial bank in this state *has* from time to time the same authority to make loans upon real estate *which* may be given by acts of Congress or the federal reserve system to national banks or bank members of the federal reserve system.

(4) The limitations and restrictions *imposed by this section do* not prevent the renewal or extension of loans made *before February 18, 1941,* and *do* not apply to real estate loans which are insured under the provisions of any act of Congress. *Those* limitations and restrictions *do* not apply to the making, extension, or renewal of any loans made under subchapter II of the act of Congress known as the Servicemen's Readjustment Act of 1944, or any amendment or supplement *to that act.*

(5) This section, however, *does* not prevent *a* bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on *the* real estate, *or* from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith. *These provisions do not* prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of *the* bank, *the* subsequent liens are necessary further to secure the payment of any debts and save *the* bank from loss. "*Commercial* bank" as used in this section *means* a bank organized to do *only* the business specified in sections 5-104 to *5-107.*"

Section 14. Section 5-508, R.C.M. 1947, is amended to read as follows:

"**5-508. Business prohibited unless under department — use of certain words prohibited — court may enjoin.** *A* person, firm, company, copartnership, or corporation, either domestic or foreign, not subject to the supervision of the *department,* and not required by the provisions of this act to report to *it,* and which has not received a certificate to do a banking business from the *department may not* advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise, and issuing notices or certificates of deposit therefor, or use *an* office sign, at the place where *the* business is transacted, having *on it an* artificial or corporate name, or other words indicating that *the* place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check, or any other form of banking business transacted. *That* person, or persons, firm, company, copartnership, or corporation, domestic or foreign, *may not* use or circulate letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed or partly written and partly printed paper, whatever, having *on them an* artificial or corporate name or other word or words indicating that *the* business is the business of a bank, savings bank, or trust or investment company. *That* person, firm, company, copartnership, or corporation, or any agent of a foreign corporation, not

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having an established place of business in the state, *may not* solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust or investment company, or in a manner *which leads* the public to believe that its business is that of a bank, savings bank, trust, or investment company. *A* person, firm, company, copartnership, or corporation, domestic or foreign, not subject to the supervision of the *department*, and not required by the provisions of this act to report to *it*, and which has not received from the *department* a certificate to do a banking business, *may not* transact business under *a* name or title which contains the word "bank," "banker," "banking," "savings bank," "saving," "trust," "trustee," "trust company," or "investment company." *A* person, firm, company, copartnership, or corporation, domestic or foreign, violating *a* provision of this section shall forfeit to the state one hundred dollars *($100)* a day for every day or part *of a day* during which *the* violation continues. Upon *suit* by the *department*, the court may issue an injunction restraining *that* person, firm, company, copartnership, or corporation from further using *those* words in violation of the provisions of this section, or from further transacting business in a manner *which leads* the public to believe that its business is that of a bank, savings bank, trust, or investment company, during the pendency of *the* action and *permanently*, and may *enter any* other order or decree as equity and justice require."

Section 15. Section 5-509, R.C.M. 1947, is amended to read as follows:

"5-509. Capital stock to be paid up — action by department — certain advertising prohibited. *A* person, firm, company, copartnership, or corporation, domestic or foreign, advertising that he or it is receiving or accepting money or savings, and issuing notes or certificates of deposit *for them*, or advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making use of *an* office sign at the place where *the* business is transacted, having *on it an* artificial or corporate name, or other words indicating that *the* place or office is the place or office of a bank, savings bank, or trust company, or that deposits are received there or payments made on check or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued or that any other form of banking business is transacted, and *a* person, firm, company, copartnership or corporation, domestic or foreign, *using* or circulating any letterheads, bill-heads, blank notes, blank receipts, certificates, or circulars, or any written or printed, or partly written and partly printed paper whatever, having *on it an* artificial or corporate name, or advertising that *the* business is the business of a bank, savings bank, or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting *that* business, and must have received from the *department*, as provided for in this act, a certificate to do a banking business. *A* person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars *($100)* a day for every day or part *of a day* during which *the* violation continues. Upon action brought by the *department*, the court may issue an injunction restraining *a* person, firm, company, copartnership, or corporation from further violating any provision of this section, and may *enter a* further order or decree as equity and justice require. *A* person, firm, company, copartnership, or corporation doing any of the things or transacting any of the business

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defined in this section, must transact *that* business according to the provisions of the Bank Act, and the *department may* examine the accounts, books, papers, cash, and credits of *that* person, firm, company, copartnership, or corporation, domestic or foreign, in order to ascertain whether *that* person, firm, company, copartnership, or corporation has violated or is violating any provisions of this section."

Section 16. Section 5-519, R.C.M. 1947, is amended to read as follows:

"5-519. Obtaining property by fraud — false report — refusal to permit inspection of books. A director, officer, agent, or employee of *a* bank who:

(1) Knowingly receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry *of it* in its books and account; or,

(2) Concurs in omitting to make any material entry thereof; or,

(3) Knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

(4) Having the custody or control of its books, willfully *refuses* or neglects to make *a* proper entry in the books of *that* corporation as required by law, or to exhibit, or allow *them* to be inspected and extracts to be taken *from them* by the *department, is* guilty of a felony."

Section 17. Section 5-523, R.C.M. 1947, is amended to read as follows:

"5-523. Limitations on loans — liabilities — what included therein — reduction when excessive. *(1)* The total loans to *a* person, copartnership, or corporation by *a* bank, including loans to a copartnership and to the several members thereof, shall at no time exceed twenty *percent* (20%) of the amount of the unimpaired capital and surplus of *that* bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating *it*, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, *may* not be considered as money borrowed. *The* limitations *imposed on total loans by this section do not* apply to loans and investments secured by obligations of the United States having a value of one hundred *percent* (100%) of the amount *loaned or invested* or to loans made on warehouse receipts and bills of lading, when *the* warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned *on them.* Loans or obligations *are* not subject under this section to any limitation based upon *that unimpaired* capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase *them*, made by *a* federal reserve bank or by the United States or *a* department, bureau, board, commission, or establishment of the United States, including *a* corporation wholly owned directly or indirectly by the United States.

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(2) The combined liabilities of the several members of *a* firm, copartnership, or unincorporated association to the loaning bank shall be included in the liabilities of *the* firm, copartnership, or unincorporated association. *That* portion of the liabilities of *the* firm, copartnership, or unincorporated assocation for which a member individually *is* legally responsible shall be included in the liabilities of the member in determining the limitations *imposed by this section.* In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When in the judgment of the *department*, the liabilities of *a* corporation or the combined liabilities of *a* corporation and one or more of its stockholders to *a* bank are excessive, *it* shall require the reduction to *the* limits and within *the* time as *it prescribes.*"

Section 18. Section 5-532, R.C.M. 1947, is amended to read as follows:

"**5-532. Reserve requirements.** *A* bank, except a reserve bank, shall maintain at all times a reserve of *that* percentage of its deposit liabilities as shall be determined by the *department* as provided *in this section*, of which reserve *a* portion the board of directors may determine may be on deposit in banks approved by the *department* as reserve banks. The *department may establish,* raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in *its* judgment banking conditions may justify. *The* power to *establish,* raise, or lower reserves *is* limited to a percentage of deposits not in excess of reserve requirements which may be established for banks that are members of the federal reserve system *and not* less than seventy-five *percent* (75%) of *those* reserve requirements for members of the federal reserve system. A bank approved by the *department* as a reserve bank must at all times maintain a reserve of *the* percentage or percentages as the *department* shall determine from time to time, which shall not be less than the percentages specified *in this section* of its deposit liabilities, of which *a* portion the board of directors may determine may be on deposit in banks approved by the *department* as reserve banks. *A* solvent bank of good repute having a full paid-up capital and surplus of three hundred thousand dollars ($300,000), doing business in *this* state or any *other state,* may be designated by the *department* as a reserve agent for Montana banking institutions. *The* approval or designation may be withdrawn or withheld at any time by the *department* for cause. *When* the reserve of *a* bank *falls* below the amount required *by this section, the* bank *may* not increase its loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand, and the *department* shall notify *a* bank whose reserve may be below the amount required, to make good *the* reserve. In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks shall be taken as the basis for ascertaining the deposit liability to banks against which reserves shall be carried. *However*, a compliance with the federal reserve banking laws, rules and regulations by member banks shall be held to be a compliance with the reserve requirements and conditions of this act, *and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this act.*"

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Section 19. Section 5-533, R.C.M. 1947, is amended to read as follows:

"**5-533. Borrowed money.** *A* bank *may not* at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the *department. Debentures* or certificates of indebtedness issued by *an* investment company to run for a period of three (3) years or more, *may* not be included in the deposit liabilities of *that* investment company, as affected by the provisions of this section."

Section 20. Section 5-604, R.C.M. 1947, is amended to read as follows:

"**5-604. Director of business regulation and employees not to be interested in banks.** Neither the *director of business regulation* nor any bank examiner *may* be interested in or a borrower from any state bank, directly or indirectly."

Section 21. Section 5-607, R.C.M. 1947, is renumbered 82A-407, and is amended to read as follows:

"**82A-407. State banking board — composition — terms — allocation.** *(1)* There is a state banking board.

(2) The board *is* composed of seven (7) members, *including* the director of business regulation, who *is* the chairman of the board. The remaining six (6) members of the board shall be appointed with consideration given banks of small, medium and large size and to geographical distribution. *At* least one (1) banker member and one (1) public member shall be appointed from each congressional district of the state. Two (2) of *the* six (6) members shall be active officers in state banks of Montana, one (1) shall be an active officer of a national bank doing business in Montana and three (3) shall be members of the public, none of whom shall be an officer, director or shareholder of any state or national bank.

(3) The members shall be appointed by the governor for terms of three (3) years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of business regulation may serve more than two (2) consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in section 82A-108."

Section 22. Section 5-610, R.C.M. 1947, is amended to read as follows:

"**5-610. Powers of board.** The state banking board shall:

(1) make final determinations upon applications for *certificates of authorization* for new banks, mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of business regulation as said duties and powers relate to banking."

Section 23. Section 5-611, R.C.M. 1947, is amended to read as follows:

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"**5-611. Rules adopted by board — new banks.** The board shall adopt rules *necessary for the administration of this act in accordance with* the Montana Administrative Procedure Act [82-4201 to 82-4225].

In particular, the board shall *adopt* rules concerning the *authorization* of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined *including* the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity, and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest."

Section 24. Section 5-612, R.C.M. 1947, is amended to read as follows:

"**5-612. Hearings — notice — intervenors.** *(1)* A hearing shall be conducted upon all applications for new bank *certificates of authorization, in accordance with* the Administrative Procedure Act [82-4201 to 82-4225] relating to a contested case, whether or not any protest to the application is filed.

(2) A notice of the filing of an application for a new bank *certificate of authorization* shall be mailed to all banks within one hundred (100) miles of the proposed location, measured in a straight line.

(3) A hearing shall be conducted no sooner than thirty (30) days and not later than ninety (90) days following the mailing of such notice.

(4) Any bank filing a written protest with the board prior to the date of the hearing shall be admitted as a "party," as defined in the Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, and the right to receive all notices, copy of the application, all orders, and the right of judicial review and appeal.

(5) All applications for mergers, consolidations or relocations of banks shall likewise require a hearing, and all of the rights and procedures stated herein shall apply to these matters."

Section 25. Section 5-701, R.C.M. 1947, is amended to read as follows:

"**5-701. Report to department of business regulation.** *A* bank shall make to the *department of business regulation* regular call reports according to the form which may be prescribed by *the department*, verified by oath or affirmation of the president, vice-president or cashier of *the* bank and attested by the signature of at least two (2) of the directors other than the subscribing officer. Each report shall exhibit in detail, and under appropriate schedules, the resources and liabilities of the bank at the close of business on any past day specified *by the department. The report* shall be transmitted to the *department* within five (5) days after the receipt of a request or requisition *for it*, and in *a* form *the department* may

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require. It shall be published as soon as possible in a newspaper published in the place where *the* bank is established, or, if there be no newspaper in the place, then in one published nearest *to that place* in the same county, at the expense of the bank. *Proof* of the publication shall be furnished at *the* times and in *the* manner as may be required by the *department.*"

Section 26. Section 5-702, R.C.M. 1947, is amended to read as follows:

"**5-702. Report of declaration of dividend.** In addition to the statement required by section *5-701, a* bank shall report to the *department* within ten (10) days after declaring any dividend, showing the amount of *the* dividend and the amount of net earnings in excess of the dividend. *The* statement shall be attested as provided for in the attestation of statement by section *5-701.*"

Section 27. Section 5-703, R.C.M. 1947, is amended to read as follows:

"**5-703. Special reports to department.** In addition to the information obtained from the report required by section 5-701, the *department may* also require *a* bank to furnish a special report in writing, verified as required by section 5-701, *when* in *its* judgment *the* special report is necessary to inform *it* fully of the actual financial condition and affairs of *the* bank. *A willfully* false statement in the *report is* perjury, and shall be punished *accordingly.*"

Section 28. Section 5-705, R.C.M. 1947, is amended to read as follows:

"**5-705. Reports confidential — false reports — penalties.** The report and any information contained in the reports and statements provided for, other than *those* reports *which* are required to be published, shall be *considered* secret and for the confidential information of the *department* only. *The* information *may* not be imparted to persons who are not officially associated with the *department*, and the information contained *in them* shall be used by the *department* only in the furtherance of *its* official duties. *The* department *may* exchange information with federal banking *departments* and with departments of other states and furnish information to *legislative auditor or* prosecuting officials who request *it* for use in pursuit of official duties. *An employee or agent of the department*, who violates any of the provisions of this section, or willfully makes a false official report as to the condition of *a* bank, shall be removed from office, and *is* also guilty of a felony. *Upon* conviction, *he* shall be *fined* not exceeding one thousand dollars *($1,000)*, or *imprisoned* in the state penitentiary not exceeding five (5) years, or both *fined and imprisoned.*"

Section 29. Section 5-801, R.C.M. 1947, is amended to read as follows:

"**5-801. Assessment on capital stock to make good impairment.** *(1) When* the *department of business regulation determines* that an impairment of capital exists in *a* bank, *it* may, in *its* discretion, notify the board of directors of *the* bank by written notice that *the* impairment exists, stating the amount thereof in dollars and percentage of the capital stock, and *it* may, *in its discretion*, order *the* board to make good *the* impairment within ninety (90) days from date of *the* notice.

(2) The board of directors shall, upon receipt of notice, convene and

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pass a resolution reciting the receipt of *the* notice of impairment and calling a special meeting of the stockholders of the bank in the manner provided in their bylaws.

(3) The stockholders *at the meeting* shall pass a resolution reciting the facts of receipt of notice from the *department*, notice of impairment and notice of meeting, and assessing themselves by assessing the stock of record, payment of which assessment must be made within the time limit specified by the *department* as provided in notice of impairment.

(4) If there *is* any stock remaining on which the assessment is not paid as provided *in this section, it* or *a* part *of it* as is necessary to pay the assessment shall be sold by the board of directors, acting through the cashier or secretary *of the bank*, at public or private sale, as appears best for all concerned, not less than thirty (30) days after the day fixed for payment of assessment. *Notice* of *the* time and place of *the* sale shall be given by registered mail to the stockholders by the board through its cashier or secretary at least ten (10) days prior to the *sale. A sale* of stock as provided *in this section causes* an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and *makes them* void in the hands of the *stockholder*, his assigns or pledgees. *A* new certificate shall be issued by the bank to the purchaser for the number of shares purchased, and a new certificate issued to the stockholder of record and delivered to him or any pledgee or assignee *of the stock* for the remaining shares, if any. *The* record of the original certificate sold shall be marked canceled on the books of the bank and *that* record *is* prima facie evidence of the regularity of the proceedings for the sale of *the* stock.

(5) If *a* bank fails to make good its capital impairment upon demand of the *department*, as provided *in this section*, the *department* may *immediately* take charge of *that* bank and proceed to liquidate *it* as in case of insolvency.

(6) If the stock does not sell for *enough* to pay the assessment *on it*, the board of directors may *sue* in the name of the corporation to collect the deficiency from the record holder whose stock has been sold for the assessment."

Section 30. Section 5-901, R.C.M. 1947, is amended to read as follows:

"**5-901. Examination and supervision.** The *department of business regulation* shall exercise constant supervision over the books and affairs of all banks doing business *in this* state. *It* shall *examine*, at least once a year, each of *those* banks and verify the assets and liabilities of each, and so far investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books. *It* shall further investigate the methods of operation and conduct of business of *the* banks and their systems of accounting, to ascertain whether *the* methods and systems are in accordance with law and sound banking principles. *It* may examine *under* oath, any of the officers, directors, agents, clerks, customers, or depositors of *a* bank *regarding* the affairs and business thereof. *It* may, in the performance of *its* official duties, issue subpoenas and administer oaths. *In* case of *a* refusal to obey *a* subpoena issued by *it, the* refusal may at once be reported to the district

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court of the district in which the bank is located, and *the* court shall enforce obedience to *the* subpoena in the manner provided by law for enforcing obedience to the process of *the* court. In all matters relating to *its* official duties, the *department has* the same power possessed by courts of law to issue subpoenas, and *have* them served and enforced. *All* officers, directors, agents and employees of banks doing business under this act, and all persons having dealings with or knowledge of the affairs or methods of *a bank*, shall at all times afford reasonable facilities for *the* examinations, and make returns and reports to the *department* as *it* may require. *They shall also* attend *hearings* and answer under oath *the department's* inquiries, produce and exhibit *any* books, accounts, documents and property *it desires* to inspect, and in all things aid *it* in the performance of *its* duty."

Section 31. Section 5-910, R.C.M. 1947, is amended to read as follows:

"**5-910. Special examinations and fees.** Special examinations may be made of *a* bank, trust company, investment company, building and loan association, or credit union when in the judgment of the *department* it *is considered* necessary, and *the* special examination shall be charged for at the rate of one hundred dollars ($100) a day for each person engaged in the examination. All special examination fees or charges shall be paid at the conclusion of the examination and the moneys collected by the *department* shall be paid to the state treasurer, for the credit of the general fund."

Section 32. Section 5-1002, R.C.M. 1947, is amended to read as follows:

"**5-1002. Change from state to national bank.** Any bank may become a corporation for the purpose of carrying on the business of banking *in* this state, *under* the act of Congress "to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and of Title 52 of the Revised Statutes of the United States, *when* stockholders owning two-thirds (⅔) of the stock of *the* bank have voted to become such corporation, or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States, or *when* a majority of the directors of *the* bank, having been authorized in their discretion to make the change, shall, by a vote of *the* majority, decide to become such corporation. *The* cashier of *the* bank shall publish notice thereof for thirty (30) days in *the* newspaper *which* the directors select, and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders, and notify the *department of business regulation* that *the* bank has decided to become a corporation under the laws of the United States."

Section 33. Section 5-1012, R.C.M. 1947, is amended to read as follows:

"**5-1012. Information obtained by department confidential — penalty for the violation thereof.** Any knowledge or information gained or discovered by the *department* in pursuance of *its* powers or duties *is* confidential information of the *department. The* information *may* not,

except as provided *in this section*, be imparted to any person not officially associated with the *department. The* information shall be used by the *department* only in the furtherance of *its* official duties, except that the department *may* exchange information with federal banking department and departments of other states and *may* furnish information to prosecuting officials who require *it* for use in pursuit of official duties. *An employee or agent of the department* who violates this section, or willfully makes a false official report as to the condition of *a* bank, shall be removed from office, and *is* also guilty of a felony. *Upon* conviction *he* shall be *fined* not exceeding one thousand dollars *($1,000)*, or *imprisoned* in the state penitentiary not exceeding five (5) years, or both *fined and imprisoned.*"

Section 34. Section 5-1018, R.C.M. 1947, is amended to read as follows:

"**5-1018. Department to make rules.** The *department may* adopt uniform rules to govern the examination and reports of banks and prescribe the form in which banks shall report their assets, liabilities, and reserves."

Section 35. Section 5-1019, R.C.M. 1947, is amended to read as follows:

"**5-1019. Special examination defined.** *An* examination made by the *department* otherwise than in the ordinary routine of the department, and because in *its* opinion the condition of the bank requires *the* examination, and *an* examination made at the request of the board of directors or stockholders of *a* bank, *is* a special examination."

Section 36. Section 5-1024, R.C.M. 1947, is amended to read as follows:

"**5-1024. Conversion of surplus and undivided profits to capital.** A bank having a surplus and undivided profits equal to or in excess of fifty *percent* (50%) of its capital stock, may increase its capital stock by the issuance of new stock for a part of *that* surplus and undivided profits. *The* increase may be made by the vote of two-thirds (⅔) of the stock in person or by proxy, either at a regular annual stockholders' meeting or at a meeting called for *that* purpose in accordance with the bylaws of the corporation. All increases of capital stock made under this section must be accomplished in a manner *conforming* to the requirements of this act *pertaining* to surplus of banks when first incorporated. New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash *for it*, but *it* shall be charged upon the books of the bank and in the statements *of the bank* against surplus and undivided profits *so* that the combined capital, surplus and undivided profits *are* not reduced by the issuance of *the* new stock. *When* a bank *has* voted to issue any stock as contemplated in this section, it shall certify *that* action to the *department, which* shall within thirty (30) days approve or reject the plan. *Its* action shall be final and written notice *of it* shall be given to the bank. If the *department* approves of the issuance of *the* new stock and so notifies the bank, *the bank* shall *then* file *a* certificate *of issuance* with the county clerk and recorder of the county *in which*

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the bank is located and with the secretary of state. Upon *the* filing with the secretary of state, the increase *becomes* effective."

Section 37. Section 5-1037, R.C.M. 1947, is amended to read as follows:

"**5-1037. Borrowing money — limitations.** *A* bank *may not* borrow money, except to meet its seasonal requirements or unexpected withdrawals. *At* no time shall the bills payable and rediscounts of *a* bank be permitted to exceed in the aggregate an amount equal to the capital and surplus of *the* bank, except with the written consent of the *department. When* it *appears* to the *department* that a bank is borrowing money in excess of the limitation *provided by this section,* or for the purposes other than as specified *in this section, the department* may require it to reduce *the* borrowing within a time to be fixed by *the department.*"

Section 38. Section 5-1058, R.C.M. 1947, is amended to read as follows:

"**5-1058. Definitions.** As used in *sections 5-1059 through 5-1062,* unless the context otherwise requires:

(1) "Bank" includes commercial banks, savings banks, trust companies, any person or association of persons lawfully carrying on the business of banking, whether incorporated or not, and to the extent that the provisions *of sections 5-1059 through 5-1062* are not inconsistent with and do not infringe upon paramount federal law, also includes national banks.

(2) "Officers" means the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for the bank in carrying out the provisions of *sections 5-1059 through 5-1062* or, in the absence of *a* designation or of the officer or officers designated, the president or any other officer currently in charge of the bank or of the office or offices *involved.*

(3) "Office" means any place at which a bank transacts its business or conducts operations related to its business.

(4) "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at *any* of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any of the following: fire; flood; earthquake; hurricanes; wind, rain, or snowstorms; labor disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, housing, food, transportation or labor; robbery or attempted robbery; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions, and other acts of lawlessness or violence, actual or threatened."

Section 39. Section 5-1059, R.C.M. 1947, is amended to read as follows:

"**5-1059. Power of department.** *When* the *department* is of the opinion that an emergency exists, or is impending, in this state or in any part

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of this state, *it* may, by proclamation, authorize banks located in the affected area to close any of their offices. In addition, if the *department* is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank or banks, or a particular office or offices thereof, but not banks located in the area generally, *it* may authorize the particular bank or banks, or office or offices so affected, to close. The office or offices so closed shall remain closed until the *department* proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, and, in either event, for such further time thereafter as may reasonably be required to reopen."

Section 40. Section 5-1060, R.C.M. 1947, is amended to read as follows:

"**5-1060. Powers of officers.** *(1) When* the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, *any* of a bank's offices, they *may*, in the reasonable and proper exercise of their discretion, determine not to open any of *those* offices on any banking day or, if having opened, to close any of *those* offices during the continuation of *the* emergency, even if the *department* has not issued and does not issue a proclamation of emergency. *An* office so closed shall remain closed until the officers determine that the emergency has ended, and for *a* further time thereafter as may reasonably be required to reopen. *However*, in no case shall *an* office remain closed for more than forty-eight (48) consecutive hours, excluding other legal holidays, without requesting the approval of the *department.*

(2) The officers of a bank may close any of the bank's offices on any day designated, by proclamation of the president of the United States or the governor of this state, as a day of mourning, rejoicing, or other special observance."

Section 41. Section 5-1061, R.C.M. 1947, is amended to read as follows:

"**5-1061. Notice to department.** A bank closing an office *under* authority granted under section *5-1060(1)* shall give as prompt notice of its action as conditions will permit and by any means available, to the *department*, and in the case of a national bank, to the comptroller of the currency."

Section 42. Section 5-1062, R.C.M. 1947, is amended to read as follows:

"**5-1062. Effect of closing.** *(1) A* day on which a bank, or any of its offices, is closed during any part of its normal banking hours under *sections 5-1059 and 5-1060* with respect to *that* bank or, if not all of its offices are closed, then with respect to *the* office or offices which are closed, *shall be* a legal holiday for all purposes with respect to any banking business. No liability, or loss of rights of any kind, on the part of *a* bank, or director, officer, or employee thereof, *may* accrue or result by virtue of *a* closing authorized by *sections 5-1059 and 5-1060.*

(2) The provisions of *sections 5-1058 through 5-1062 are* in addition

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to any other law of this state or of the United States, authorizing the closing of a bank or excusing the delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond the bank's control, or otherwise."

Section 43. Section 5-1101, R.C.M. 1947, is amended to read as follows:

"**5-1101. Grounds for closing bank.** *(1) When* it *appears* to the *department of business regulation* that:

(a) A bank has willfully violated its charter or *a* law of this state;

(b) A bank has willfully violated *a* general rule of the *department*, made in accordance with law;

(c) The capital of *a* bank is impaired or for any reason is below the amount required by law and has not been made good after notice, as provided by law, or without *that* notice, in event a majority of the board of directors of *the* bank notify the *department* in writing that the *impairment* cannot be made good;

(d) A bank cannot meet or has failed to meet its liabilities as they become due in the regular course of business;

(e) A bank's reserve has fallen below the amount required by law and it has failed to make good *that* reserve within thirty (30) days after being requested to do so by the *department*, or, without *that* notice, if a majority of the directors, in writing, notify the *department* that *the* reserve cannot be made good within thirty (30) days, or if it is continually allowing its reserve to fall below the required amount;

(f) A bank is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition;

(g) A bank refused to submit its papers, books and concerns to the inspection of the *department*; or,

(h) An officer of *a* bank has refused to be examined *under* oath *regarding* the affairs, business or concerns of any bank in so far as *they* relate to solvency or matters having to do with the supervision by the *department; then the department may, in its discretion, close the bank and take possession of all the books, records, assets and business of every description of the bank, and hold them and retain possession of them until the bank is authorized by the department to resume business, or its affairs are liquidated as provided in this chapter, and it shall do so in cases where a bank comes into its possession voluntarily, or in the manner provided by law.*

(2) The powers and authority conferred on the *department* by this section, except in cases of voluntary surrender *are* discretionary and not mandatory. *As* long as *the department* acts in good faith *the department and its employees and agents may not* be held liable civilly or criminally or upon their official bonds *for* action taken *under this section* or for any failure to act *under it.*"

Section 44. Section 5-1102, R.C.M. 1947, is amended to read as follows:

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"**5-1102. Penalty for closing bank with criminal intent.** If *an employee or agent of* the department, as a result of malice or for personal gain, *declares a* bank insolvent, he *is* subject to *a* fine not exceeding one thousand dollars *($1,000)* or imprisonment in the county jail not exceeding one (1) year, or both, and shall forfeit his office."

Section 45. Section 5-1103, R.C.M. 1947, is amended to read as follows:

"**5-1103. Bank may be placed in department's possession.** *A* bank may place its affairs and assets under the control and in the possession of the *department* by posting a notice on the front door of *the* bank, indicating that *it* is in *the possession of the department. The* notice shall be signed by a majority of the directors in office of *the* bank. Immediately upon the posting of *the* notice by *a* bank, it shall notify the *department of its action.*"

Section 46. Section 5-1104, R.C.M. 1947, is amended to read as follows:

"**5-1104. Effect of posting notice.** The posting of *the* notice by the directors of *a* bank, or of a like notice by the *department is* sufficient to place all assets and property of *the* bank, of whatever nature and wherever *located,* in possession of the *department,* and *operates* as a bar to *an attachment* or other legal proceedings against *the* bank or its assets. *No* valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of *the* bank after the posting of *the* notice or after taking possession of *a* bank by the *department* without *its* consent."

Section 47. Section 5-1105, R.C.M. 1947, is amended to read as follows:

"**5-1105. Taking possession of bank — notice.** On taking possession of the assets and business of the bank, the *department* shall, in addition to posting notice on the front door of *the* bank, also notify at once, personally or by wire, all corresponding banks, and all persons or corporations known to *it* to be in possession of any of the estate of *the* bank."

Section 48. Section 5-1106, R.C.M. 1947, is amended to read as follows:

"**5-1106. Resumption after closing.** After the *department* has taken possession of *a* bank, *it* may permit *that* bank to resume business upon conditions *which* may be approved by *it.*"

Section 49. Section 5-1107, R.C.M. 1947, is amended to read as follows:

"**5-1107. Powers of department on closing bank — court proceedings.** Upon taking the assets and business of *a* bank into *its* possession, the *department* is authorized to collect all moneys due to *that* bank, and to do *those* other acts necessary to conserve its assets and business, and *the department* shall proceed to liquidate the affairs *of the bank. The department may, in its discretion, and* except as otherwise limited by the

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terms of this act, do any acts necessary or desirable for the protection of the property and assets of *the* bank and the speedy and economical liquidation of the assets and affairs of *the* bank and the payment of its creditors, or for the reopening and resumption of business where that is practicable or desirable. *It* may institute, in *its* own name or in the name of the bank, *those* suits and other legal proceedings as *it considers* expedient for *those* purposes. *By applying* to the district court of the county in which *the* bank is located, or to the judge *of that court* in chambers, *the department* may *obtain* an order to sell, compromise, or compound any bad or doubtful debt or claim, and to sell and dispose of any assets, which sale may be made to stockholders, officers, directors, or others interested in *the* bank, on consent of the court. *In the* court proceedings the bank shall be made a party by notice issued on order of the court or judge, in *place* of summons, and served upon some officer of the bank, if there *is any* in the county. *If* no officer can be found in the county then the *notice* shall be posted in three (3) public places in the county for at least ten (10) days before the day of hearing. The hearing of *an* application or petition by the *department* may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after *the* bank has had five (5) days' notice of *the* application, or the notice has *been* posted for at least ten (10) days."

Section 50. Section 5-1108, R.C.M. 1947, is amended to read as follows:

"**5-1108. Recourse of aggrieved bank — application to court for injunction — pleadings — evidence — appeals.** *A* bank aggrieved by the action of *the department* in taking possession of its assets or closing its doors may, within ten (10) days after possession *has* been taken, apply to the district court of the county in which its principal place of business is located, or to the judge *of that court* in chambers, to enjoin further proceedings by the *department. The* court or the judge in chambers, after notifying the *department* to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may on the merits dismiss *the* application or enjoin the *department* from further proceeding and direct *it* to surrender the business and assets of *the* bank. *The* application for injunction may be heard at any time after five (5) days' notice from the time of service on *the department,* in the discretion of the court, or at any time prior *to then* by the consent of the *department.* Application shall be made on the verified complaint of the bank, in the form used in civil actions, and a copy of *the* complaint shall be served on the *department* with the order to show cause. The *department* shall, at least two (2) days before the time set for hearing, file *with the court* and serve upon counsel for plaintiff an answer to the complaint, also in the form used in civil actions. *Any* questions raised by motion in other actions may be raised in the answer. On the issues *raised by* the complaint and answer, the court, or the judge at chambers, at the time fixed for showing cause, shall try the matter on the merits by hearing the allegations and proofs of the parties *and shall enter judgment,* as *in* the trial of *other* civil actions. *If* the *department* makes no appearance in the time *allowed,* the court shall enter *its* default and proceed to hear the proofs of the plaintiff as in civil actions under similar circumstances, and enter

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judgment accordingly. The judgment entered either after hearing on the merits or by default, *is a* final judgment. *During* the pendency of litigation the *department* shall take *that* action in relation to the assets of *the* bank *which* is necessary to conserve them."

Section 51. Section 5-1109, R.C.M. 1947, is amended to read as follows:

"**5-1109. Department may appoint agents — liquidating agents — salaries and expenses.** *(1) The department* may retain *those* officers or employees of *the* bank *which it considers* necessary. *It* shall require from the agent appointed by *it* and from *those* assistants *who* have charge of any of the assets of the bank *that* security for the faithful discharge of their duties as *it considers* proper.

(2) The salary of *a* liquidating agent and necessary clerical assistance, and other expenses incurred by *a* liquidating agent, shall be borne equally and ratably by the bank or banks in process of liquidation under *the* agent's charge in proportion to the total amount of resources of each of *the* banks. The funds for *those* expenses shall be raised by assessing each bank in ratio herein set forth and paying *those* expenses direct to the persons entitled *to them*, without depositing any of *the* funds in the state treasury."

Section 52. Section 5-1110, R.C.M. 1947, is amended to read as follows:

"**5-1110. Compensation of agents and attorneys.** The compensation of the agents, attorneys, expert accountants and other assistants, *appointed by the department,* and all expenses of liquidation and distribution of a bank whose assets and business *have been* taken possession of by the *department*, shall be fixed by the *department*, but subject to *approval* by the judge of the district court of the county in which the bank is located, on notice of *the* bank. *The department* shall, upon written request of *the* district judge, supply semiannual statements showing the condition of *the* bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert *accountants* shall be fixed and approved before services are rendered. When the compensation *has* been fixed and approved and the services rendered, the *compensation* shall be paid out of the funds of *the* bank in the hands of the *department*, and *are* a proper charge and lien on the assets of *the* bank."

Section 53. Section 5-1111, R.C.M. 1947, is amended to read as follows:

"**5-1111. Notice to creditors of insolvent bank.** The *department* shall *give* notice by advertisement in a newspaper of general circulation in the town or city in which *the* bank is situated, if there *is* one, and if not, then in *some* other newspaper published in *this* state, *which* the *department* shall designate, once a week for two *(2)* successive weeks. *The notice shall call* on all persons who have claims against *the* bank to present *them* to the *department* or *its* authorized agent at a place to be specified in *the* notice, and to make sworn proof, in form to be fixed by *the department,* within the time specified in *the* notice, not less than ninety *(90)* days from the date of the first publication. A copy of *the* notice

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shall be mailed to all persons whose names appear as creditors upon the books of the bank."

Section 54. Section 5-1112, R.C.M. 1947, is amended to read as follows:

"**5-1112. Claims — allowance and rejection.** The *department* shall reject or allow all claims in the whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by registered mail, and an affidavit of the service of *the* notice, which shall be prima facie evidence *of service, shall be* filed in the office of the *department.* The action of the *department is* final unless an action *is* brought by the claimant against the bank in the *district* court of the county where the bank is located within ninety (90) days after *the* service to fix the amount of the claim and its order of priority or either. An appeal from the *department's* allowance, either as to priority or amount, may also be taken to the district court of *that* county by any party in interest by serving *notice* on the *department,* stating the grounds of objection and filing *it* in *that* court within thirty (30) days after allowance. Within five (5) days after *the* notice, the *department* shall file in the court, and serve on the appellant, a copy of the claim and *its* reasons for allowance. The court shall, after five (5) days' notice of time and place of hearing on the issues *raised,* hear the proof of the parties and enter judgment reversing, affirming or modifying the *department's* action."

Section 55. Section 5-1113, R.C.M. 1947, is amended to read as follows:

"**5-1113. Payment of claims.** Claims presented to the *department* prior to the expiration of the time fixed in the notice to creditors, and allowed by *it,* shall be paid in the order of priority fixed *in this chapter.* Those filed after *that* expiration and *within* one year *of that expiration are* entitled, after they have been allowed by the *department,* to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the *department* and available for the payment of claims of their order of priority at the time *the* claims are filed. *As* against other claims of *the* same order of priority, on which dividends have been paid, they *are* entitled to payment in a proportionate amount before further payments are made on *those* other claims. All claims filed after the expiration of one year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind, except claims of shareholders, based on stock or assessments paid on stock have been fully paid, and a surplus remains in the hands of the *department,* and then only from *that* surplus."

Section 56. Section 5-1114, R.C.M. 1947, is amended to read as follows:

"**5-1114. Claims — order of payment — priorities.** *(1)* Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the *department* shall be as follows:

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(a) The expense of liquidation, including compensation of agents, employees, and attorneys;

(b) All funds of any other bank in process of liquidation by the *department* and placed on deposit by the *department;*

(c) All funds held by the bank in trust;

(d) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies, and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing therefor), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this *subsection (1)(d)* and take the same priority as debts due any other depositor. All contractual liabilities pro rata. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing *of* the bank, *shall* be considered as part of the debt due.

(e) Interest on the classes of claims *contained in subsections (1)(a) through (1)(d) of this section* without regard to the priority computed from the date of closing of the bank at the rate of seven *percent* (7%) *a year;*

(f) Unliquidated claims for damages and *similar claims,* including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments. *The department* may, in *its* discretion, without regard to the priorities fixed in *subsections (1)(c) through (1)(f)* of this section, or in preference to the payment of any claims of creditors within these *subsections,* pay off and discharge any lien, claim, or charge against the assets or property of the bank in *its* hands and pay *those* sums *it considers* necessary for the preservation, maintenance, conservation, and protection of *those* assets and property, and likewise property on which the bank has liens by mortgage or otherwise. *It* may also in *its* discretion create a fund or retain in *its* hands, in preference to the claim of any creditors in *subsections (1)(c) through (1)(f),* moneys for *those* purposes.

(2) Collateral which *has* been put up or pledged as security for the payment of bills payable by *a* bank, or loans or discounts which have been outstanding as rediscounts of *a* bank prior to the closing *of it, is* not available to the other creditors of *the* bank in whole or in part until *the* bills payable or rediscounts have been retired, after which offsets as *provided* in this section shall be allowed.

(3) Deposits of *a* person, firm, or corporation in a bank which is in the possession of the *department* may be offset against any indebtedness, (subject to the conditions of *subsection (2)* of this section), except assessments on stock, due to *the* bank from *that* person, firm, or corporation. All dividends when declared in favor of *a* creditor of the bank may be applied, in the discretion of the *department,* in satisfaction of the indebtedness, if any, due the bank from *the* creditor."

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Section 57. Section 5-1115, R.C.M. 1947, is amended to read as follows:

"**5-1115. Claims — partial payments.** The *department* need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. *It* may, in *its* discretion, and if under the circumstances of the particular case *it considers* it expedient and safe, at any time after taking possession of *the* bank and prior to the expiration of *the* period fixed for filing of claims, if *it has* on hand in cash sufficient funds over and above the expenses of liquidation, make *pro rata* distribution to any class of creditors next entitled *to distribution*, in the order of priority fixed *in this chapter*, making *that* payment to *the* creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by *the* books and records. At any time after the expiration of the date fixed for the presentation of claims against *the* bank and from time to time thereafter, when, in *its* discretion there are sufficient funds available, the *department* shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of *the* bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that *a* person, prior to the expiration of *the* period, or at any other time, has been paid more than the prorata amount due him as compared with the amounts then paid other creditors, nothing more *may* be paid *that creditor* until the payment made other creditors *places* them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon *the* disputed claims or deposits shall be held by the *department* until the validity of *those* claims or deposits *has* been finally determined. Claims against *a* bank in process of liquidation may be assigned in whole or in part subject to the approval of the *department*. Assignments of claims *are* binding upon the *department* only after *they* have been filed and allowed by the *department*, and only then subject to the payment of the assignor's liabilities to the bank. *An* assignment shall be made by filing written notice, signed by the original claimant, with the *department* or person in charge of *the* bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against *a* bank closed or taken possession of by the *department*, whether issued before or after closing, shall not be recognized as a claim against *the* bank, or as an assignment of any amount, whether protested or not protested."

Section 58. Section 5-1116, R.C.M. 1947, is amended to read as follows:

"**5-1116. Deposit of funds in department's hands.** All funds in the hands of the *department* belonging to *a* bank in process of liquidation shall be deposited in *the department's* name in *those* banks within the state *which* may be selected and designated by *it* and subject to *its* checks. *Those* funds *are* to be preferred and protected as *provided* in this act."

Section 59. Section 5-1117, R.C.M. 1947, is amended to read as follows:

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"**5-1117. Disposition of unclaimed funds.** *(1)* The *department* shall certify to the *state* treasurer *a* complete list of funds remaining *with it* uncalled for, which have been left *with it* in *its* official capacity, in trust for depositors in and creditors of *a* liquidated bank after they have been held by *it* for six *(6)* months from the date of the final liquidation of the institution. Along with this certificate, *it* shall transmit to the *state* treasurer the funds with accumulated interest *on them*, which *it* has so held in trust for six *(6)* months. A copy of *the* certificate shall also be filed with the state auditor, who shall make a record *of it.*

(2) The state treasurer shall deposit *the* funds and interest in the general fund of *this* state.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the state board of examiners for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the state board of examiners shall forward it to the auditor, who shall audit the *claim* and if found correct so certify to the state board of examiners, *which*, if *it approves the claim*, shall transmit *the claim* to the *legislature* with a statement of *its* approval."

Section 60. Section 5-1118, R.C.M. 1947, is amended to read as follows:

"**5-1118. Disposition of assets remaining after payment of claims.** *(1) When* the *department* has paid to each depositor and creditor of *the* bank whose claims have been approved and allowed as provided *in this chapter*, the amount due *on them*, or made satisfactory adjustment *of them*, and *has* made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and *has* paid all the expenses of liquidation, *it* shall file with the clerk of the district court of the county in which the bank is located, a report of *its* administration of *the* trust. If there *are* remaining assets on hand the *department* may apply to the judge of *that* court in open court or in chambers, for an order authorizing *it* to surrender the remaining assets together with all the stationery, correspondence, books and records, kept by the bank while it was a going concern to the directors of *the* bank in office at the time of closing *it*, as trustees for stockholders, or to *that* other person, if any, designated as trustee by a majority of the stockholders. The report and petition shall be set for hearing upon notice *which* the court may direct. *Upon* hearing and approval of *the* report and account and the surrender of *the* assets as directed, the *department is* discharged from all further liability or responsibility in connection with the assets and affairs of *the* bank. The court may, if requested, require *the* trustees to give bond in *an* amount the court may fix, conditioned for the faithful performance of their duties. *The* trustee or trustees *shall* complete the liquidation of any remaining assets *and may* sell and dispose of real and personal property as rapidly as *possible* and *shall* distribute the proceeds among the stockholders as their rights may appear, or dispose of the *proceeds* in *some* other manner as the stockholders shall by majority action, direct. *The* court may upon request of a majority of the stockholders order the *department* to close up the trust as provided in *subsection (2)* of this section.

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(2) If the assets of *the* bank *are* insufficient for making payments in full to the depositors and creditors of *the* bank, then, *when* the *department* has liquidated all available assets and disbursed *them* as provided by law, the *department* shall file with the clerk of court of the county in which the bank is located, a final report of *its* liquidation of *the* bank. Upon notice *which* the court may order, the report shall be set for hearing before the court and if found correct and all funds accounted for, the court shall approve *it.* The *department* may at the same time and in the report make application to the district court of the county in which *the* bank is located, for an order directing the closing of the trust and upon entry of the order closing the trust the *department is* discharged from all further liability or responsibility in connection with the assets and affairs of *the* bank. *The* charter of *the* bank shall be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern, and *considered* by the *department* to be of no value, may be destroyed. *However,* no correspondence or records *may* be destroyed *until* ten *(10)* years *after* the date the bank ceased to be a going concern.

(3) On application for orders, as provided *in this section,* the bank shall be made a party by notice issued on order of the court or judge and served in *a* manner the court *directs* and applications authorized by this section may be *heard* at any time in court or in chambers, as the court may order, *upon* not less than five (5) days' posted *or* served notice of the hearing."

Section 61. Section 5-1123, R.C.M. 1947, is amended to read as follows:

"**5-1123. Punishment.** When no other punishment is provided, *a* person willfully or knowingly violating this act, *is* guilty of a misdemeanor. The attorney general upon information furnished by the *department,* shall *sue* to enforce this act."

Section 62. Section 5-1126, R.C.M. 1947, is amended to read as follows:

"**5-1126. Power of closed banks to borrow money from governmental agencies.** Notwithstanding any other law, the liquidating agents of closed banks *may* borrow money from *an* agency *of the federal government* on behalf of commercial banks, savings banks, trust companies and investment companies closed and in liquidation and, as security *for the loan may* pledge or mortgage the assets and properties thereof, for the purpose of paying depositors or creditors in part or in full, after *applying* to and obtaining the approval of the *department* and the district court of the county in which *the* bank, *or* trust or investment company is located, upon *the* court proceedings prescribed in section 5-1107."

Section 63. Section 5-1129, R.C.M. 1947, is amended to read as follows:

"**5-1129. Manner of issuing preferred stock.** *The* preferred stock may be issued and sold upon terms and conditions approved by the *department,* or required for the purchase of *the* stock by *an* agency or quasi-agency of the federal government."

Section 64. Section 5-1202, R.C.M. 1947, is amended to read as follows:

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"**5-1202. Banking institutions may take advantage of federal deposit insurance corporation aid.** *A* banking institution *may*, on the authority of its board of directors, or a majority thereof, enter into *those* contracts, incur *those* obligations and generally perform any acts necessary or appropriate in order to take advantage of any memberships, loans, subscriptions, contracts, grants, *rights,* or privileges, available to banking institutions or to their depositors, creditors, stockholders, conservators, or liquidators, by virtue of those provisions of the Federal *Deposit Insurance* Act, which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors. *A banking institution may also* subscribe for and acquire stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation, and *may* comply with the lawful *rules* and requirements from time to time *adopted* by *that* corporation."

Section 65. Section 5-1203, R.C.M. 1947, is amended to read as follows:

"**5-1203. Appointment of the corporation as agent.** *If a* banking institution, the deposits in which are in any extent insured by the Federal Deposit Insurance Corporation created by the Federal *Deposit Insurance* Act, *12 U.S.C. sections 1811-1831,* is closed on account of inability to meet the demands of its creditors, the *department of business regulation* may appoint *the* corporation agent, without bond, to assist *it* or act for *it* in the liquidation of *that* banking institution."

Section 66. Section 5-1205, R.C.M. 1947, is amended to read as follows:

"**5-1205. Examinations by the corporation may be accepted — effect of act.** *(1)* The *department may* accept, in *its* discretion, in *place* of any examination authorized by the laws of this state to be conducted by *the* department of a banking institution, the examination made of *it* within a reasonable period by the Federal Deposit Insurance Corporation, *if* a signed copy of *the* examination is furnished to *the department. The department* may, also in *its* discretion, accept *a* report relative to the condition of a banking institution obtained by *the* corporation within a reasonable period, in *place* of a report authorized by the laws of this state to be required of *the* institution by *the* department, *if* a copy of *the* report is furnished to *the department. The department* may in *its* discretion disclose to *the* corporation, or *an* official or examiner thereof, any information possessed by the *department* with reference to the conditions or affairs of *an* insured institution.

(2) The department may furnish to *the* corporation, or to *an* official or examiner thereof, a copy or copies of any examinations made of *those* banking institutions and of any reports made by *them.*

(3) Nothing in this section *limits* the duty of any banking institution in this state, deposits in which are to any extent insured under the Federal *Deposit Insurance* Act, or any substitution for *it,* to comply with the provisions of *that* act, its substitutions, or the requirements of *that* corporation relative to examinations and reports, nor *limits* the powers of the *department* with reference to examinations and reports under existing law."

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Section 67. Section 5-1206, R.C.M. 1947, is amended to read as follows:

"**5-1206. Closed banking institutions may borrow from the corporation.** *If a* banking institution is closed on account of inability to meet the demands of its depositors or by action of the *department* or by action of its directors or in the event of its insolvency or suspension, the *department* or *its* agent, with the permission of the court having jurisdiction, may borrow from *the* corporation and furnish any of the assets of *the* institution to *the* corporation as security for a loan from *it. The department* upon the order of a *district* court of competent jurisdiction may sell to *the* corporation any part or all of the assets of *the* institution. The provisions of this section *do* not limit the power of *a* banking institution, or the *department* to pledge or sell assets in accordance with any existing law."

Section 68. Section 5-1401, R.C.M. 1947, is amended to read as follows:

"**5-1401. Common trust fund authorized.** *A* bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or itself and others, as co-fiduciaries. *It* may, as *that* fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in *the* common trust fund, if *the* investment is not prohibited by the instrument, judgment, decree, or order creating *the* fiduciary relationship, and if in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciary or co-fiduciaries to *the* investment. *A* bank or trust company qualified to act as fiduciary in this state, which is not a member of the federal reserve system, shall, in operation of *the* common trust fund, comply with the rules *adopted* by the *department of business regulation,* and *the department may adopt* rules *it considers* necessary and proper in the premises."

Section 69. Section 7-101, R.C.M. 1947, is amended to read as follows:

"**7-101. Purpose — definition.** A corporation mutually operated for the purpose of encouraging home ownership and thrift among its members and making substantially all of its loans to them on real estate mortgage security, shall be known in this act as a building and loan association or a savings and loan association, and *is* under the supervision of the *department of business regulation, which* shall enforce all laws with respect *to it.* The members of a building and loan association *are* its shareholders, stockholders, borrowers or purchasers of real estate under contract. *The* associations have continual succession and shall be organized under the provisions of this *chapter. When used* in this *chapter,* "building and loan association" *includes* savings and loan associations organized under this act. *"Department" means the department of business regulation provided for in Title 82A, chapter 4."*

Section 70. Section 7-106, R.C.M. 1947, is amended to read as follows:

"**7-106. Capital stock requirements — investigation — certificate of incorporation, how issued.** The capital stock named in the articles

of incorporation *refers* to the authorized capital stock. *The* organization may be completed and business commenced when five per cent *(5%) of the capital stock* is subscribed and not less than twenty-five hundred dollars *($2,500)*, paid in, in cash. *That* amount must thereafter be maintained. *When the* articles of incorporation are in *proper* form and regularly executed and the bylaws have been duly approved as required *in section 7-105* and it *appears* to the satisfaction of the *department* that five per cent *(5%)* of the authorized capital has actually been paid in cash upon the subscription of shares, the *department* shall *then* ascertain from the best sources of information at *its* command the responsibility, character and general fitness of the incorporators. *The department shall also determine whether* there is a reasonable need for the existence of *the* association, and *whether* the public convenience and advantage will be promoted *by its existence.* If the *department is* not satisfied with the result of *its* investigations of the matters specified *in this section, it* shall, within sixty days (60) after *the* articles of incorporation and bylaws have been presented to *it*, refuse to issue the certificate described *in this section.* If *it is* satisfied with the result of *its* investigations, *it* shall within sixty days (60) after *the* articles of incorporation and bylaws have been presented to *it*, issue under *its* official seal, a certificate reciting in substance the filing in *its* office of the articles of incorporation and bylaws. *The certificate shall also state* that *the* articles and bylaws conform to all the requirements of this act; that *the department* has approved *them* and that *it* believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this act and *the* bylaws and that there is a reasonable need for the existence of *the* building and loan association, and that the public convenience and advantage will be promoted thereby. *The* certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one *(1)* of which shall be retained by the *department*, the other three *(3)* shall be returned to the incorporators who shall *immediately* file one *(1)* copy *with* the secretary of state *and* one *(1) with* the clerk and recorder of the county in which the principal place of business of *the* association is located. *The* other *copy* shall be retained by the association. Immediately upon the receipt of *the* certified copy, the secretary of state shall issue a certificate of incorporation, *at which time* the incorporation of *the* association *is* complete."

Section 71. Section 7-108, R.C.M. 1947, is amended to read as follows:

"**7-108. Department to approve contracts paying income to person other than association — penalty for not securing.** No fiscal agency or promotion contract or any other contract or arrangement whereby the membership fee, or any other income properly payable to the association, or any part thereof, *is* payable to an agent or other contracting party or otherwise than to the association, or whereby any part of the business of *the* association or the management or conduct of its affairs or the expense *of them* is contracted to another, *may* be entered into or allowed until *it* has been submitted to the *department* and by *it* approved in writing. *That* contract *may not* be extended without *the department's* approval. *The* contract, or the extension of *the* contract, not first approved *is* void. *A* person operating under *the* contract or extension, not first approved, or taking or receiving income properly payable to the association without approval, *is* guilty of a misdemeanor."

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Section 72. Section 7-113, R.C.M. 1947, is amended to read as follows:

"**7-113. Powers and duties of building and loan associations.** *A* building and loan association *may*:

(1) *Have* continual succession, by its corporate name;

(2) *Sue* and be sued, in any court;

(3) *Make* and use a common seal and alter *it* at pleasure;

(4) *Appoint those* officers or agents the business of the corporation *requires*, and *pay* them suitable compensation;

(5) *Enter* into obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

(6) *Issue* stock to members on *the* terms and conditions the constitution and bylaws provide, but *an* association *may not* issue preferred stock.

(7) *Assess* and collect from members dues on stock and interest on loans at the times and in the amount provided for in the constitution and bylaws. The combined total of the amounts paid to an association for interest, commission, bonus, discount and other similar charges, less a proper deduction for all dividends, refunds, and cash credits of all kinds, shall not create an actual net cost to the borrower in excess of the maximum lawful contract rate of interest in this state. Interest not exceeding the maximum lawful contract rate may also be charged on unpaid interest payments from the time *those* interest payments are due. Interest, not exceeding the lawful contract rate, may also be charged and collected on delinquent stock payments when *those* unpaid payments are credited with dividends. *The* interest shall in no event be at a rate exceeding the rate *percent* of the dividend declared on the same unpaid stock payments. *An* association *may not* charge or collect from *a* stockholder, member or borrower, any fines, premiums, or penalties of any kind. *An* officer, agent or employee of *an* association collecting or attempting to collect *a* penalty, fine or premium of any kind or interest at a rate higher than provided in the note or other evidence of debt and in this act, *is* guilty of a misdemeanor.

(8) *Permit* members to withdraw all or part of their stock credits at *the* times and upon *the* terms, as the constitution and bylaws may provide. *No* charge or fee, except as provided *in this section*, *may* be made against *a* member who withdraws his stock, after having given thirty (30) days' notice of *the* withdrawal. *No* fine of any description *may* be made upon the par value of *that* stock or upon the declared dividends because of *the* withdrawal. *A* member who withdraws his stock or whose stock is matured, *is* entitled to receive all dues paid in and all dividends declared less interest, if any, as provided in subsection (7), less a reasonable membership fee not exceeding two (2) *percent* of the par value of each share of stock and less a *pro rata* share of all losses, if any, which have occurred. *No* other fine or assessments *may* be made against *the* stock. Applications for withdrawal *shall* be registered on the books of the association in the order received and one-half of all cash collections, not required to meet outstanding contracts, must be used for the payment of

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the matured stock and of the withdrawals in the order registered. *The* other half of *those* collections each month may be used for the payment of withdrawals other than in the order registered, but no member *may* receive more than one hundred dollars *($100)* in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money and all fixed charges.

(9) *Cancel* shares of stock upon which all credits have been withdrawn, or upon which loans have been canceled or stock upon which no payments have been made for a period of six (6) months, by returning to the stockholders all credits, if any, and reissue *the* shares as new stock.

(10) *Issue* stock to minors and permit *it* to be withdrawn as other stock, and the receipt *by the* minor *is* a valid acquittance if his rights have been fully secured to him.

(11) *Acquire*, hold, encumber and convey *that* real estate and personal property necessary for the transaction of its business, or necessary to enforce or protect its securities. *Not* over ten (10) per cent of the assets of *an* association *may* be invested in home office buildings, furniture, and fixtures. *Other* real property acquired in any manner or for any purpose *may* not be held for more than five (5) years, except by permission of the *department.*

(12) *Borrow* money, only when necessary not exceeding twenty (20) *percent* of its assets except when borrowing from the federal home loan bank as provided *in this section*, and issue its promissory note *for the loan. The* assets and securities of an association *may* not be pledged to secure its borrowed money or for any other purpose, without the consent of the *department.* However, if the *department* determines that it is advisable to pledge assets in order that funds may be secured *it* may authorize *the* pledging. *The* margin of security pledged *may not* exceed twenty-five (25) *percent* of the funds so borrowed except when funds are borrowed from the federal home loan bank. *An* association may borrow money from the federal home loan bank upon *the* terms required by the federal home loan bank, and *may* execute the promissory note of the corporation *for the loan*, and *may* pledge any of the assets of the corporation to secure the repayment of *the* loan, with interest, in accordance with the Federal Home Loan Bank Act, and the rules adopted *under it.*

(13) *Make* loans to members on the security of the shares of the association, and also on their notes secured by first mortgages on improved real estate, including suburban homes, but not on farm lands or mining property, for not to exceed seventy-five (75) *percent* of the actual value of *the* real estate, and upon *the* terms and conditions *which* may be provided in the constitution and bylaws. *However,* where the promissory note, or other written evidence of the loan made by *a* building and loan association *requires* the payment of *the* loan, or total aggregate sum of principal and interest in periodic installments, *the* promissory note, or other written evidence of debt shall specifically state the actual interest rate charged the borrower upon the unpaid balance of the principal amount at each

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periodic payment. *When* the note or other evidence of debt does not require the payment of *the* loan in periodic installments, the note or other evidence of debt shall specifically state the actual rate of interest charged the borrower.

(14) Cancel those loans and release the securities on those terms the board of directors may provide. A borrower may have his loan canceled by paying all the interest up to date of cancellation and the sum actually borrowed, less payments on principal, dues paid in, *and* the dividends credited.

(15) *Invest* the money of the association in:

(a) The bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) The bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) The obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) Improved real estate which has been sold under contract, including suburban homes, but not including farm lands or mining property. *However,* the total amount remaining so invested, excluding real estate otherwise acquired, shall at no time exceed fifteen per cent *(15%)* of its assets. *The* amount so invested *may not* exceed eighty-five per cent *(85%)* of the price stipulated in the contract of sale or eighty-five per cent *(85%)* of the value of the property so purchased, whichever is the lesser;

(e) Not to exceed ten per cent *(10%)* of the association assets in other bonds and securities.

(16) *Loan* money to other building and loan associations;

(17) *Make a* semiannual distribution of all the earnings after payment of expenses and setting aside a sum for the contingent funds as provided *in this act*;

(18) *Amend* its articles of incorporation by changing the name, place of business, the number of directors, *and* increase or decrease the capital stock and provide for its own continual succession by a majority vote of its directors. *However, those* amendments *are of no effect* until approved by the *department*;

(19) *Dissolve* the corporation in accordance with the provisions of this chapter;

(20) *Provide* by constitution and bylaws, adopted or amended, by its board of directors for the proper exercise of the powers granted *in this section* and the conduct and management of its affairs;

(21) *Exercise those* other powers *which* are necessary and proper to enable *the* corporation to carry out the purpose of its organization."

Section 73. There is a new R.C.M. section numbered 7-113.2 that reads as follows:

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7-113.2. Consolidation and transfer. Two (2) or more building and loan associations, with the approval of the department, may consolidate and become incorporated in one (1) body, with or without any dissolution or division of the funds or property of any of them, or any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors, and ratified by a two-thirds (⅔) vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

Section 74. Section 7-118, R.C.M. 1947, is amended to read as follows:

"**7-118. Bonds of officers, agents and employees.** *The* board of directors of every building and loan association *shall* require that all officers, agents, and employees of building and loan associations whose duty includes the handling of moneys, notes, bonds, credits, and cash items, and whose duties include bookkeeping or the making of entries in relation to the business of the building and loan association and its customers, be bonded. The board of directors shall by *an* order entered upon the minute books of the board designate all the officers, agents, and employees to be so bonded and the amount of bonds to be given by each. *The* action as to the personnel and amount and the surety company or sureties *shall* be subject to approval by the *department. The* bonds *shall* be in *a* form *which* shall be provided and approved by the *department, and* the bonds *shall* be approved by the president of the building and loan association and his action reported to the board of directors. *All* bonds required by this section *shall* be kept in the custody of the building and loan association subject to inspection by the *department. As* far as possible, *a bond may* not be placed in the custody of the officer, agent, or employee for whom *it* is given."

Section 75. Section 7-119, R.C.M. 1947, is amended to read as follows:

"**7-119. Employment of agents — licenses and revocation thereof.** *(1)* It *is* unlawful for *a* building and loan association doing business *in this* state to employ *an* agent for the purpose of soliciting loans or the sale of stock in *that* association, unless he *is* first licensed by the *department. An* agent representing *an* association, foreign or domestic, doing business *in this* state *may not* solicit loans or the sale of stock of any association unless he *is* first licensed by the *department.*

(2) A license *may not* be issued to *an* applicant for an agent's license until *the* applicant *has* first filed *with* the *department* a written request from the building and loan association desiring to employ him as agent and has filed an application upon a form prescribed and furnished by the *department. The application* must show the applicant's name, business and residence address, community or district in which he wishes to act as agent, the name of the company to be represented, his occupation for the last twelve *(12)* months and other information the *department* may require. If the *department* is satisfied that the applicant is a fit and proper

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person to engage in the solicitation of loans or the sale of stock *it* shall issue the license. The *department* upon ten (10) days' notice to *an* agent, and *after a* hearing, may revoke the license of *an* agent upon the following grounds:

(a) Misrepresentation;

(b) Conviction in any court for violation of the criminal statutes;

(c) Evidence sufficient to convince the department that *the* agent is not a fit and proper person to *sell* building and loan association stock;

(3) The department shall revoke the license of *an* agent upon the request of *the* association employing *the* agent.

(4) Each license provided for in this *section expires* on December *31* of each year, and for issuance or renewal the *department* shall require a fee of two dollars *($2).*"

Section 76. Section 7-122, R.C.M. 1947, is renumbered 84-7001, and is amended to read as follows:

"**84-7001. Taxation of associations.** *(1)* Every *building and loan or savings and loan* association *subject to regulation under Title 7, chapter 1, R.C.M. 1947,* shall be assessed for and pay taxes upon all real and personal property owned by *the* association, and also upon the moneyed capital employed in *the* business. *The* moneyed capital *shall* be ascertained by deducting from the amount of bonds, notes and other evidences of indebtedness, including evidences of indebtedness secured by mortgage on real estate or personal property, of *the* associations, the amount standing to the credit of the members of *an* association, upon its books, and any indebtedness representing money borrowed for use as moneyed capital. *The* moneyed capital as so ascertained shall be taxed at the same rate and take the same classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith. The secretary of *an* association shall furnish to the department of revenue or its agent in the county in which the principal office of *the* association is located, within five (5) days after demand, a condensed statement verified by his oath, of the resources and liabilities of *the* association as disclosed by its books, at *12* noon on the first Monday of March in each year. *If the* secretary *fails* to make the statement hereby required, the department or its agent shall *immediately* obtain *the* information from any other available source, and for this purpose he shall have access to the books of *the* association. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by *the* association, and of the moneyed capital employed in the business of *the* association, which assessment shall be as fair and equitable as he may be able to make from the best information available, or *the* assessor may, for the purpose of *the* assessment, adopt the figures disclosed by any prior report made by *the* association to any state or federal officer *under a* state or federal law. *A* person required by this section to make the statement provided *for in this section,* who *fails* to furnish *it, is* guilty of a misdemeanor.

(2) The amount standing to the credit of each member of *an* association, upon its books, shall be considered and held as the individual credit

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of each member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares from which loans have been made, or money advanced, by the association, and as to such shares they shall be listed for taxation at the net cash value of the stock, to be ascertained by deducting the loan from the cash value of the shares. Associations organized under or controlled by *Title 7, chapter 1, are* subject to taxation in no other way."

Section 77. Section 7-125, R.C.M. 1947, is amended to read as follows:

"**7-125. Duties of department.** The *department* shall examine all building and loan associations doing business in this state at least once a year. Also, *when the holders of* ten per cent (10%) of the subscribed stock of *an* association *file* a written application with the *department*, requesting *it* to make a special examination of *an* association, *it* shall make *the* examination *immediately. The* expense of the examiner making *the* examination shall be paid by the association examined, and the examiner's finding *shall* be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this act."

Section 78. Section 7-126, R.C.M. 1947, is amended to read as follows:

"**7-126. Powers of department.** *The department may* prescribe and supervise *a* uniform system of reports, and accounting for all associations. *The department* shall have access to and may compel the production of all books, papers, securities and moneys of any association under examination. *It may* administer oaths to and examine the officers and agents of *the* association and its affairs."

Section 79. Section 7-127, R.C.M. 1947, is amended to read as follows:

"**7-127. Reports of condition — contents — publication.** *A* building and loan association shall make to the *department* a report of condition *when* requested to do so by the *department*, according to the form which may be prescribed by *the department. The report shall be* verified by the oath or affirmation of the president, vice-president, or secretary of *the* association, and attested by the signature of at least two *(2)* of the directors. *The* report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day specified; and shall be transmitted to the *department* within five (5) days after the receipt of a request or requisition *for it* from *the department* and in *a* form *which* may be required by the *department. It* shall be published as soon as possible in a newspaper in the place where *the* association is established, or if there *is* no newspaper published in the place, then in one published nearest thereto in the same county, at the expense of the association. *Proof* of publication shall be furnished at *the* times and in *the* manner *which* may be required by the *department.*"

Section 80. Section 7-131, R.C.M. 1947, is amended to read as follows:

"**7-131. Foreign associations — requirements.** *(1) An* association as defined in section *7-130* organized under the laws of any *other* state, of the United States, or of any foreign government shall, before doing busi-

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ness *in* this state, file *with* the secretary of state and the *department*, a duly authenticated copy of their charter, articles of incorporation, or articles of agreement, and also a statement, verified by oath of the president and secretary of *the* corporation or managing officials if other than a corporation, and duly verified, showing:

(a) The name of *the* association and the location of its principal office or place of business *outside* this state; and the location of the place of business or principal office *in* this state;

(b) The names and residences of the officers, trustees or directors;

(c) The amount of capital stock;

(d) The amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, *signed by* its president, vice-president, or other acting head, and *by* its secretary if there *is* one, certifying that the association has consented to all the license laws and other laws of *this* state relative to foreign associations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state, and that service of process may be made upon a citizen of this state, whose name and place of residence shall be designated in *the* certificate. *Service of process on that* agent *is* valid service on the association."

Section 81. Section 7-136, R.C.M. 1947, is amended to read as follows:

"**7-136. Conformity required.** The powers, rights, duties, privileges, and obligations of every association organized and doing business in *a* form similar to that authorized by this act, shall be governed, controlled, construed, extended, limited, and determined by the provisions of this act, to the same extent and effect as if *the* association had been organized and incorporated under or pursuant to its provisions, and the articles of incorporation, bylaws and rules of each heretofore made or existing are hereby modified, altered and amended to conform with the provisions of this act and the same are declared void where *the* articles of incorporation, bylaws or rules are inconsistent with its provisions; except that the obligations of any existing association, whether between *the* association and its shareholders or any one of them, or any other person or persons, or any valid contract between the shareholders of the association existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act; and with *these* exceptions every building and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this act, notwithstanding anything to the contrary in its articles of incorporation, bylaws or rules. All obligations to *the* association heretofore contracted shall be enforceable by it and in its name and demands, claims and rights of action against *the* association shall be enforced against it as fully and completely as they might have been enforced before. Except as above set forth, on and after six months after the passage and approval of this act, no domestic or foreign association now engaged in the business of a building and loan association, or a business of like character, shall be permitted to conduct *that* business in this state unless it *complies* in every respect with the provisions of this act."

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Section 82. Section 7-138, R.C.M. 1947, is amended to read as follows:

"**7-138. Department report.** The *department* shall preserve in permanent form a full record of *its* proceedings, including a concise statement of each association examined, and *it* shall annually make a report to the governor of the general conduct and condition of the building and loan associations doing business in this state, with *those* suggestions as *it considers* expedient. *The* report shall also include the information contained in the statement required of the association, and arranged in tabulated form."

Section 83. Section 7-139, R.C.M. 1947, is amended to read as follows:

"**7-139. Obtaining property by fraud, false report, refusal to permit inspection of books.** A director, officer, agent, or employee of *a* building and loan association who:

(1) Willfully receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud, omits to make or direct to be made a full and true entry *of it* in its books and accounts;

(2) Concurs in omitting to make *a* material entry thereof;

(3) Willfully makes or concurs in making or publishing *a* written report, exhibit or statement of *the association's* affairs or pecuniary condition, containing any material statement which is false; or

(4) Having the custody or control of *the association's* books, willfully refuses or neglects to make *a* proper entry in the books as required by law, or to exhibit, or allow *them* to be inspected and extracts to be taken *from them* by the *department is* guilty of a felony."

Section 84. Section 7-147, R.C.M. 1947, is amended to read as follows:

"**7-147. Reports and examinations by department confidential.** *(1) An employee or agent of the department, who* fails to keep secret the facts and information obtained in the course of an examination or by reason of his official position, except when the public duty of *that* officer requires him to report upon or take official action regarding the affairs of the association so examined, or willfully makes a false official report as to the conditions of *the* association, shall be removed from office and shall be fined not more than five hundred dollars *($500)*, or imprisoned in the penitentiary not less than two (2) years nor more than five (5) years, or both. Nothing in this section *prevents* the proper exchange of information, relating to building and loan associations and *their* business, with the representatives of building and loan departments of other states, but in no case shall the private business or affairs of *an* individual, association, or company be disclosed. *The department* on request of any federal home loan bank, shall furnish *that* bank any information *it* may have relative to the finances, manner of business, methods of bookkeeping, and any other information relating to *an* association which is a member of, seeking to become a member of, a borrower from, or seeking to become a borrower from, *a* federal home loan bank.

(2) An association, the officers or agents thereof, and the *department*

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may do *anything* necessary to enable *a* building and loan association within this state to become a member of the federal home loan bank of this or any adjoining district so far as may be compatible with the constitution of this state and the laws of the United States."

Section 85. Section 7-149, R.C.M. 1947, is amended to read as follows:

"**7-149. Voluntary liquidation and settlement.** *With* the consent of the *department an* association organized under the laws of and doing business in this state, may, if the stockholders *consider* it advisable, go into liquidation. *For* the purpose of so doing *it* may, at any regular or called meeting of the stockholders, adopt a resolution declaring that *the* association intends to go into liquidation and discontinue business as a building and loan association. A copy of *the* resolution, duly certified by the president and secretary of *the* association, under the seal thereof, shall be transmitted to the *department* within ten (10) days after *its* passage. *The department* shall *then* issue *its* certificate reciting that *the* resolution has been filed in *its* office, and that *the* association is in liquidation. After the filing of *the* notice, it *is unlawful* for *the* association to issue stock, or to loan or advance its money to members or to any other person. *All* of the income and receipts of *the* association, in excess of the actual expense of managing *it*, shall be applied to pay off first the indebtedness and then the stock in *the* association upon which no loans have been made, the same to be paid pro rata. The board of directors of *the* association in liquidation may adopt *those* rules and make *those* orders *which are* just and equitable for the sale and disposition of all property held by *the* association and for the division of the assets of *the* association. *The* association in liquidation *may* be *examined by,* and *shall be* under the supervision of the *department.*"

Section 86. Section 7-150, R.C.M. 1947, is amended to read as follows:

"**7-150. Insolvency or impairment of building and loan association — powers of department.** *When* it *appears* to the *department* that the affairs of *a* building and loan association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, the *department* may take possession of all books, records, and assets of every description of *the* association and retain possession of *them* pending the further proceedings specified *in this section. If* the board of directors, secretary, or person in charge of *the* association *refuses* to permit the *department* to take possession, the *department* shall communicate *that* fact to the attorney general. *The* attorney general *shall* at once institute *the* proceedings necessary to place the *department* in immediate possession of the property of *the* association. Upon taking possession of the effects of the association, the *department* shall prepare a full and true statement of the affairs and condition of *the* association, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it and pay the immediate and reasonable expenses of *the department's* trust. When the condition of *the* association has been fully ascertained and it *appears* that the affairs of *the* association are in fact in an unsound condition the *department* shall at once notify, in writing, the board of directors of *the* association of *its* decision, giving them twenty (20) days in which to restore the affairs of *the* association to sound condition. Meanwhile, the *department* shall remain in charge

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of the books, records, and assets of every description of *the* association, *shall* attend or be represented at all directors and stockholders meetings held, *and shall* suggest *those* steps *it considers* necessary to restore *the* association to a sound condition. *If the association* is not *restored to a sound condition* within twenty (20) days, *the department* shall report the facts to the attorney general. *The* attorney general *shall* institute proceedings in the district court of the county in which *the* association has its principal place of business, for the appointment of the *department* as receiver. *As receiver, the department may* collect all moneys due *the* association and *may* do *those* other acts *which* are necessary to conserve its assets and business, and *it* shall liquidate *the association's* affairs. *The department may,* except as otherwise limited by the terms of this act, do any acts necessary or, in *its* discretion, desirable for the protection of the property and assets of *the* association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors, or for the resumption of business of *the* association where that is practicable or desirable. *The department* may institute in *its* own name as, or in the name of the association, *those* legal proceedings *it considers* expedient for *those* purposes. *By applying* to the district court of the county in which *the* association is located, or to the judge thereof, in chambers, *the department* may, upon sufficient showing of cause, *obtain* an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell any *of* the assets. *The* sale may be made to stockholders, officers, directors, or others interested in *the* association, on consent of the court. On *the* proceedings the association shall be made a party by notice issued on order of the court or judge, in *place* of summons, but served in like manner. *The* hearing of *the* application or petition by the *department* may be had at any time, either in term or vacation in court, or in chambers, as the court may order, after *the* association has had five (5) days' notice of *the* application."

Section 87. Section 15-2614, R.C.M. 1947, is amended to read as follows:

"**15-2614. Control — supervision — reports.** The corporation *is* subject to the examination of the *department of business regulation,* and shall make reports of its condition not less than annually to *that department, which* in turn shall make copies of *the* reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, *R.C.M.* 1947."

Section 88. Section 27-402, R.C.M. 1947, is amended to read as follows:

"**27-402. General purpose.** The general purpose of this *chapter* is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state."

Section 89. Section 27-403, R.C.M. 1947, is amended to read as follows:

"**27-403. Definitions.** *(1) Unless the context requires otherwise, in this chapter:*

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(a) "Board" means the board of milk control provided for in section 82A-406.

(b) "Person" means *a* person, firm, corporation, or co-operative association.

(c) "Producer" means *a* person who produces milk for consumption *in this* state, selling *it* to a distributor.

(d) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(e) "Distributor" means *a* person purchasing milk from any source, either in bulk or in packages, and distributing *it* for consumption *in this* state. *The* term includes what are commonly known as jobbers and independent contractors. *The* term, however, excludes *a person* purchasing milk from a dealer licensed under this *chapter*, for resale over the counter at retail, or for consumption on the premises.

(f) "Producer-distributor" means *a* person both producing and distributing milk for consumption *in this* state.

(g) "Retailer" means *a* person selling milk in bulk or in packages over the counter at retail, or for consumption on the premises, and includes, but is not limited to, retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(h) "Dealer" means *a* producer, distributor, producer-distributor, jobber, or independent contractor.

(i) "Licensee" means *a* person who holds a license from the *department.*

(j) "Market" means *an* area of the state designated by the *department* as a natural marketing area.

(k) "Consumer" means *a* person or *an* agency, other than a dealer, who purchases milk for consumption or use.

(l) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(m) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(n) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(o) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail, or for consumption on the premises.

(p) "Milk" means the lacteal secretion of a dairy animal or animals, including *those* secretions when raw and when cooled, pasteurized, standardized, or homogenized, recombined, concentrated fresh, or otherwise

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processed and all of which is designated as grade A by a duly constituted health authority, and also includes *those* secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(q) Class I milk *includes* all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half and half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this *chapter*, whether raw, pasteurized, homogenized, sterile or aseptic.

(r) Class II milk *includes* milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(s) Class III milk *includes* milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(2) The *department may* assign *new* milk products, *not expressly included in one of the classes defined in this section,* to the class which in its discretion it determines to be proper."

Section 90. Section 27-405, R.C.M. 1947, is amended to read as follows:

"**27-405. General powers of the department.** (1) The *department* shall supervise, regulate, and control the milk industry of *this* state, including the production, transportation, processing, storage, distribution and sale of milk in *this* state for consumption *in this* state. *Nothing* in this *chapter abrogates* or *affects* the status, force or operation of any provision of public health laws or the law under which the *department of* livestock is constituted together with the *department of* livestock *rules* or county board of health *rules*, or municipal ordinances for the promotion or protection of the public health. *The department may* co-operate with the *department* of health *and environmental sciences*, the *board of* livestock or any county or city board of health or the department of agriculture in enforcing this *chapter.*

(2) The *department* shall investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in *this* state and conduct hearings upon any subject pertinent to the administration of this *chapter.* The *department may* subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or *considered* necessary to carry out the purposes and intent of this *chapter*, and may issue commissions to take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the *department* at its offices. *The department shall give* at least ten (10) *days'* notice to the proposed witness."

Section 91. Section 27-406, R.C.M. 1947, is amended to read as follows:

"**27-406. Markets.** *(1)* Pursuant to the declaration of policy relating to milk set forth in section 27-401, the *department shall* designate natural

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marketing areas which shall together embrace all the geographical area of the state and *shall* enforce minimum producer, wholesale, and retail prices *established for those* areas *by the board.*

(2) Natural marketing areas shall be established throughout the state by the *department. Before a* proposed natural marketing area is established the *department,* after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within *the* proposed natural marketing area, who are licensed by the *department of livestock,* and the consuming public may present evidence and testify. *If* the hearing or hearings make it evident to the *department* that the establishment of *the* proposed natural marketing area is in the public interest, the *department* shall establish *the* natural marketing area.

(3) The *department may* from time to time adjust the boundaries of natural marketing areas, if after a hearing upon notice of at least thirty (30) days to all interested parties it finds *the* adjustment to be in the public interest."

Section 92. Section 27-407, R.C.M. 1947, is amended to read as follows:

"**27-407. Establishment of minimum prices.** *(1)* The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state, by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rule making under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include, but shall not be limited to, the following items:

(a) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

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(b) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(c) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(d) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) The prices of butter-nonfat dry milk, and cheese;

(f) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk and prevailing wage rates in the state;

(h) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(i) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rule making under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

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(d) The formula whereby minimum retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

(11) No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

(12) All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(13) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold state-wide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

(14) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(15) Upon petition by any producer, producer-distributor or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an area-wide or state-wide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and

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marketing practices which have historically prevailed in the area concerned or state-wide, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an area-wide or state-wide pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(16) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or area-wide or state-wide pooling arrangements, or abandonment thereof."

Section 93. Section 27-408, R.C.M. 1947, is amended to read as follows:

"**27-408. Licenses to producers, producer-distributors, distributors and jobbers.** In any market, where the provisions of this *chapter* apply, it *is* unlawful for *a* producer, producer-distributor, distributor or jobber to produce, transport, process, store, handle, distribute, buy or sell milk unless *the* dealer *is properly* licensed as provided by this *chapter.* It *is* unlawful for *a* person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this *chapter.* The *department* may decline to grant a license, or may suspend or revoke a license already granted, upon due cause and after hearings."

Section 94. Section 27-409, R.C.M. 1947, is amended to read as follows:

"**27-409. Licenses — disposition of income.** *(1) A* producer, producer-distributor, distributor or jobber *may not* engage in the business of producing or selling milk subject to this *chapter* in this state without first having obtained a license from the *department of* livestock or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug and Cosmetic Act, and without being licensed under this *chapter* by the department. The annual fee for *the* license from the department *is* two dollars ($2), *and is* due before July *1*, and shall be deposited by *the* department to the credit of the general fund.

(2) In addition to *the* annual license fee, the *department* shall, in each year, before April *1*, for the purpose of securing funds to administer and enforce this *chapter*, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee per hundredweight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee per hundredweight on the total volume of all milk subject to this act sold by a producer.

(c) A fee per hundredweight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

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(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this act. The fee assessed on a producer or on a distributor may not be more than one-half (½) the fee assessed on a producer-distributor.

(4) The assessment upon producer-distributors, producers, and distributors shall be paid quarterly before *January 15, April 15, July 15, and* October *15*, of each year. *The* amount of *the* assessment shall be computed by applying the fee designated by the *department* to the volume of milk sold in the *preceding* calendar quarter.

(5) Failure of *a* producer, producer-distributor, or distributor to pay *an* assessment when due *is a* violation of this *chapter* and his license under this *chapter* automatically *terminates* and *is* void. *A* license so terminated shall be *reinstated* by *the department upon* payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

(6) All assessments required *by this chapter* shall be deposited by the department in the earmarked revenue fund. *All* costs of administering this *chapter*, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this *chapter*, shall be paid out of control board moneys in *that* fund.

(7) The department may, if it finds the costs of administering and enforcing this *chapter* can be derived from lower rates, amend its rules to fix the rates at a less amount on or before the first day of April in any year."

Section 95. Section 27-410, R.C.M. 1947, is amended to read as follows:

"**27-410. Application for licenses.** An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the *department*, and an applicant shall state facts concerning his circumstances and the nature of the business to be conducted *which* in the opinion of the *department* are necessary for the administration of this *chapter. The* application shall certify the applicant to be the holder of all licenses required by the *department of* livestock for the conduct of his business or, in the case of milk entering this state from another state or foreign nation, compliance with the requirements of the Montana Food, Drug and Cosmetic Act. *The* application shall be accompanied by the license fee required to be paid."

Section 96. Section 27-411, R.C.M. 1947, is amended to read as follows:

"**27-411. Declining, suspending and revoking licenses — penalties in lieu of suspension or revocation.** (1) The *department* may *refuse* to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this *chapter* or of any lawful order or *rule* of the board *or department*, the failure or refusal to make required statements or

reports, *or failure to pay* license or assessment fees *are* causes for which the *department* may, at its discretion, suspend, or revoke a license.

(2) In *place* of suspension or revocation of a license the *department* may assess a civil penalty not to exceed five hundred dollars ($500) per day for each daily failure to comply with or each daily violation of the provisions of this *chapter* or of any lawful order or *rule* of the *department or* board. *If* the person against whom *a* civil penalty is assessed fails to pay *the* civil penalty *immediately,* the *department shall* collect *the* civil penalty by a civil proceeding in the district court of the first judicial district. *This penalty* shall be construed as civil and not criminal in nature. Any moneys received by the *department* as a result of collection of civil penalties shall be paid into the *earmarked revenue fund as provided by section 27-417, R.C.M. 1947.*"

Section 97. Section 27-413, R.C.M. 1947, is amended to read as follows:

"**27-413. Rules and orders.** The *department* may adopt and enforce rules and orders necessary to carry out the provisions of this *chapter and any orders adopted under it by the department or the board. A* rule or order shall be posted for public inspection in the main office of the *department* for thirty (30) days, and a copy *shall be* filed in the office of the *department. A* copy *shall also be* sent by registered letter to the secretary of each area, *except in the case of* an order directed only to a person or persons named *in it,* which shall be served by personal delivery of a copy, or by mailing a copy to each person to whom *the* order is directed, or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with *laws of this state. The* posting, in the main office of the *department,* of *a* rule *or* order, not required to be *personally* served as provided *in this section,* and *the* filing in the office of the *department is* sufficient notice to all persons affected by *the* rule or order. A rule or order when *properly* posted and filed or served, as provided in this *section, has* the force of law."

Section 98. Section 27-414, R.C.M. 1947, is amended to read as follows:

"**27-414. Rules of fair trade practices.** *The department may adopt* reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this *chapter* and among licensees and the general public. *Those* rules shall contain, but *are* not limited to, provisions *prohibiting* the following methods of doing business which are unfair, unlawful, and not in the public interest:

(1) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by *a* person, whether in the form of money or otherwise.

(2) The giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of *a* customer.

(3) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

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(4) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board.

(5) The payment of a price *lower* than the applicable producer price, established by the board, by a distributor to *a* producer for milk which is distributed to any person, including agencies of the federal, state or local government."

Section 99. Section 27-414.1, R.C.M. 1947, is amended to read as follows:

"**27-414.1. Limitation on extension of credit to retailers.** *A* sale or delivery *may not* be made by *a* producer-distributor, distributor, or jobber to *a* retailer, except for cash or payment within fifteen (15) days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. *A* producer-distributor, distributor, or jobber *may not* extend more than fifteen (15) days' credit after billing to a retailer. *A* retailer *may not* receive delivery of milk without agreement to pay *for it* in cash within fifteen (15) days after regular billing. A correctly dated check which is honored upon presentment *is* cash within the meaning of this *section. An* extension or acceptance of credit in violation *of this section* shall be construed as rendering or receiving financial assistance. *The* licenses of producer-distributors, distributors, or jobbers involved in violation *of this section* shall be suspended or revoked as determined by the *department* in its discretion."

Section 100. Section 27-414.2, R.C.M. 1947, is amended to read as follows:

"**27-414.2. Financing prohibitions — producer and retailer.** *(1) A* producer, producer-distributor, distributor, or jobber licensed under this *chapter may not* advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of *a* retailer. *A* producer, producer-distributor, distributor, or jobber *may not* be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer. *A* producer-distributor, distributor, or jobber licensed under this *chapter may not* advance or loan money or credit to, or furnish money or credit for, or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts or other commercial paper for or on behalf of *a* producer. *A* producer-distributor, distributor, or jobber *may not* be financially interested, either directly or indirectly, in the conduct or operation of the business of a producer. *This* section *does* not prohibit *a* producer from belonging to, participating in, or patronizing a co-operative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

(2) This section *does* not prohibit a producer from requesting and a distributor from granting an advance payment for milk *before* the regular date of payment *for milk* or limit in any way the right of a producer to

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assign part or all of moneys which are or may become due to him from a distributor."

Section 101. Section 27-415, R.C.M. 1947, is amended to read as follows:

"**27-415. Entry, inspection and investigation.** The *department* may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled or stored, or where the books, papers, records, or documents relative to *those* transactions are kept and *may* inspect and copy *them* in any place *in this* state. *The department* may administer *oaths*, and take testimony for the purpose of ascertaining facts which, in the judgment of the *department*, are necessary to administer this *chapter*."

Section 102. Section 27-416, R.C.M. 1947, is amended to read as follows:

"**27-416. Reports of dealers — accounting system — records.** *(1)* The *department may* require *licensees* to file with *it* reports at reasonable or regular *times which* the *department* may require, showing *the licensee's* production, sale, or distribution of milk, and any information *considered* by the *department* necessary which pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the *department* may direct. *Failure* or refusal to file *a report* when directed to do so *is* grounds for the revocation of *the* license and *is* a violation for which *the licensee* may be fined as provided *by this chapter*, one or both, at the discretion of the *department*.

(2) The *department* shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) A record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which *the* milk or cream was put;

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) A complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received *in payment;*

(d) A record of the wastage or loss of milk or dairy products;

(e) A record of the items of handling expense;

(f) A record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, *and* location of *the* facilities, and the original, or duplicate original, of all agreements covering *sales for them;*

(g) Other records *which* the *department considers* necessary for the proper enforcement of *this chapter*."

Section 103. Section 27-417, R.C.M. 1947, is amended to read as follows:

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"27-417. **Disposition of fines.** *(1)* All fines assessed *by a* court for violation of this *chapter* shall be paid by the court to the *department.*

(2) All fines received by the *department* shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. *Fines* assessed for violations of this *chapter* are earmarked for the purposes of this *chapter.*"

Section 104. Section 27-421, R.C.M. 1947, is amended to read as follows:

"27-421. **Co-operation with other governmental agencies.** In order to secure a uniform system of milk control, the *department* shall confer and co-operate with the *proper* authorities of other states and of the United States, including the secretary of agriculture of the United States, and, for *those* purposes, the *department may* conduct joint hearings, issue joint or concurrent orders and exercise all its powers under this *chapter.*"

Section 105. Section 27-422, R.C.M. 1947, is amended to read as follows:

"27-422. **Violations made misdemeanors — penalties.** *(1) A* person who *produces, sells, distributes, or handles* milk in any way, except as a consumer, without a license *from the department* as required by this *chapter, or who violates a lawful rule of the department or board, is* guilty of a misdemeanor *punishable* by a fine not exceeding six hundred dollars ($600). Each day's violation *is* a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this *chapter,* and in all civil actions for the recovery or enforcement of *penalties,* provided for in this *chapter. All of those* actions, both criminal and civil, shall be tried in the district court.

(3) The county attorneys, in their respective counties, *shall* diligently prosecute all violations of this *chapter.*"

Section 106. Section 27-423, R.C.M. 1947, is amended to read as follows:

"27-423. **Constructions, exceptions and limitations.** *(1)* The license required by this *chapter is* in addition to any other license required by *state law* or any municipality of *this* state. This act shall apply to every part of the state of Montana.

If any portion of this *chapter* is held invalid or unconstitutional, *the* holding *does* not affect the validity of the *chapter* as a whole, or any part *of it* which can be given effect without the part so held to be unconstitutional or invalid.

(2) This chapter does not apply to foreign or interstate commerce except in so far as *it* may be effective in compliance with the United States constitution, and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling, within the state by a dealer, of milk produced outside of the state, becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this *chapter,* affecting intrastate

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milk, immediately apply and the powers conferred by this *chapter* attach thereto."

Section 107. Section 27-424, R.C.M. 1947, is amended to read as follows:

"**27-424. Additional remedies.** The *department* may *begin any proceeding* at law or in equity as may appear necessary to enforce compliance with this *chapter* or to enforce compliance with *an* order *or* rule of the board *or department adopted under* this *chapter* or to obtain a judicial interpretation of any of *them. In* addition to any other remedy, the *department* may apply to the district court of the district *where* the action arises, for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist. *The department may not* be required to post bond in *an* action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board *or department* in the name of the *department of business regulation* and it *is* not necessary in *an* action to which the *department* is a party that *the* action be brought by or against *this* state on relation of the *department.* The *department may sue* by its own attorney *and* it *may also* call upon *a* county attorney to represent it in the district court of *his* county, or the attorney general to represent it on appeal to the supreme court, or it may associate its own *attorney* with either in any court."

Section 108. Section 27-426, R.C.M. 1947, is amended to read as follows:

"**27-426. Bonds required of distributors — amounts — forms and conditions.** *(1) A* distributor before purchasing milk from a producer shall deliver to the *department* a surety bond of *not less than* one thousand dollars ($1,000), executed by the *distributor* as principal and by a surety company authorized to do business in this state as surety. *The* bond shall be *on* a form approved by the *department* and shall be conditioned upon the payment, in the manner required by this *chapter,* of all amounts due to producers for milk purchased by *the distributor* during the license year. *The* bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay *a* producer for milk in the manner required by this *chapter,* the *department* shall proceed *immediately* to ascertain the names and addresses of all producer-creditors of *that* distributor, together with the amounts due them and shall request all *those* producer-creditors to file a verified statement of their respective claims. *The department* shall *then sue* on the bond on behalf of *the* producer-creditors. Upon *suing on the* bond, the *department* may require the filing of a new bond; and immediately upon a recovery in *an* action upon *the* bond, *the* distributor shall file a new bond. *Upon* failure to file *a new bond* within ten (10) days in either case, *the* failure *is* grounds for the revocation or suspension of the license of *the* distributor. *If* recovery *on* the bond is not sufficient to pay all of the claims as finally determined by the court, *the* amount recovered shall be divided pro rata among *the* producer-creditors.

(2) The minimum bond of one thousand dollars ($1,000) shall be required of distributors purchasing an average daily quantity of milk of

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less than one hundred *(100)* gallons; distributors purchasing an average daily quantity of one hundred *(100)* gallons and less than two hundred *(200)* gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars ($2,000); distributors purchasing an average daily quantity of two hundred *(200)* gallons and less than three hundred *(300)* gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars ($3,000); distributors purchasing an average daily quantity of three hundred *(300)* gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars ($5,000).

(3) If a distributor increases his purchases of milk during the license year *to* exceed the amount for which *he* is bonded, *he* shall *immediately* post *the* additional bond required to comply with this section.

(4) The *department may* require *a* distributor to furnish a bond in addition to those specified *in this section,* if, after notice and hearing and upon good cause shown, it determines *the* additional bond *is* required to assure payment of all amounts due or to become due to producers.

(5) Failure of *a* distributor who purchases milk from producers to *post a* bond required *by this section is* a violation of this *chapter.*"

Section 109. Section 35-145, R.C.M. 1947, is amended to read as follows:

"**35-145. Home owners' loan corporation bonds as security for deposit of public funds.** Subject to rules prescribed by the *department of community affairs,* the bonds and other obligations herein made eligible for investment, may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required, or may by law be deposited as security."

Section 110. Section 47-202, R.C.M. 1947, is amended to read as follows:

"**47-202. Definitions.** Unless the context *requires otherwise,* in this act:

(1) "Person" *means* individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" *means* one or both of the licenses provided for by this act.

(3) "Licensee" *means* the person holding *a* license.

(4) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(5) "Consumer type loan business" *means* the business of making loans of two thousand five hundred dollars ($2,500) or less generally repayable in substantially equal installments."

Section 111. Section 47-203, R.C.M. 1947, is amended to read as follows:

"**47-203. Department — powers and duties — adoption of rules.**

(1) All powers and duties of regulation and supervision conferred by this act are vested in the *department.* The *department* shall adopt rules necessary to carry out the intent and purposes of this act. A copy of every rule shall be mailed to each licensee at least fifteen (15) days in advance of its effective date. *However,* the failure of a licensee to receive a copy of *a rule does* not exempt him from *complying* with *a rule adopted under this act.*

(2) All rules adopted under this act *are* binding *on* all licensees and enforceable by the *department* through the power of suspension or revocation of licenses."

Section 112. Section 47-206, R.C.M. 1947, is amended to read as follows:

"47-206. License, when required — display — nontransferable — removal — license year, fees — use. *(1) A* place of business operated under this act shall properly *display on the premises* a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this act as to each license. Application for a license shall be on a form prescribed and furnished by the *department.* A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the *department.*

(2) With each application *the applicant* shall *submit* fifty dollars ($50) as an investigation fee and one hundred twenty-five dollars ($125) as a license fee. *The* license fee shall be returned to the applicant if the application is denied. The license year *is* the calendar year and the license fee for any period less than six (6) months *is* sixty-two dollars fifty cents ($62.50). *A* license *remains* in force until surrendered, suspended, or revoked.

(3) All moneys collected under the authority of this act shall be paid into the state treasury by the *department.*"

Section 113. Section 47-207, R.C.M. 1947, is amended to read as follows:

"47-207. Issuance or denial of license, when — mailing of denial order and findings. *(1)* Within thirty (30) days after an application for license is filed with the *department,* together with the required fees, the *department* shall issue the license if the character and general fitness of the applicant is such as to warrant belief that the business will be operated lawfully and fairly within the provisions of this act, or enter an order denying *the license,* if *it finds* to the contrary.

(2) A copy of the order granting or denying a license, together with a summary of the *department's* findings, shall be filed in the office of the *department* and shall be public record. A copy of the order denying a license, together with a summary of the *department's* findings, shall be mailed postage prepaid, to the applicant at the address stated in the application."

Section 114. Section 47-215, R.C.M. 1947, is amended to read as follows:

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"**47-215. Investigations, when — who may be investigated.** The *department* may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this act by (1) *a* licensee, (2) *a* person who advertises for, solicits, or holds himself *out* as willing to make loans in amounts of two thousand five hundred dollars ($2,500) or less, or (3) *a* person whom the *department* has reason to believe is violating or is about to violate this act."

Section 115. Section 47-218, R.C.M. 1947, is amended to read as follows:

"**47-218. Annual report — contents — verified — publication.** *A* licensee shall annually before April *15*, file *a* report for the preceding calendar year with the *department. The* report shall give information with respect to the financial condition of *the* licensee and shall include: The name and address of the licensee; balance sheets at the beginning and end of the calendar year; a statement of income and expenses; a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used in the consumer loan business; an analysis of charges, size of loans made and types of security on loans; an analysis of suits and foreclosures; and other relevant information the *department* may reasonably require concerning the business during the preceding calendar year of each licensed place of business conducted by *the* licensee *in this* state. *The* report shall be made under oath and be in *a* form prescribed by the *department, which* shall publish annually an analysis and *summary* of *the* reports."

Section 116. Section 47-223, R.C.M. 1947, is amended to read as follows:

"**47-223. Revocation and suspension of license, when.** The *department*, upon ten (10) days' written notice to the licensee and statement of the grounds and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend, but not for more than thirty (30) days, or revoke *a* license if *it* finds the licensee has knowingly violated any provision of this act. *When* the *department enters* an order revoking or suspending a license, *it* shall mail a copy of *the* order by registered mail to the licensee at the address for which the license was issued."

Section 117. Section 50-604, R.C.M. 1947, is amended to read as follows:

"**50-604. Copies of bills and invoices to be kept for inspection.** *A* person, firm, or corporation, mining, shipping, or producing coal, and all persons, firms or corporations wholesaling, jobbing, exchanging, offering for sale or selling at retail any coal *in this* state, shall keep a true, accurate, and complete copy of all the original statements, bills, and invoices of all coal produced, shipped, marketed, exchanged, or sold for at least one (1) year. *All* papers, records and files of any person, firm, or corporation transporting, producing, shipping, exchanging, or selling any coal *in this* state shall, at all times, be open to inspection by the attorney general, the county attorneys, and the *department of business regulation* for the purposes of enforcing this act."

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Section 118. Section 50-606, R.C.M. 1947, is amended to read as follows:

"**50-606. Enforcement of chapter.** *The department of business regulation* shall enforce this act and the attorney general and the county attorneys *shall* prosecute all cases arising under *its* provisions."

Section 119. There is a new R.C.M. section numbered 51-101.1 that reads as follows:

51-101.1. Definitions. Unless the context requires otherwise, in this act, "department" means the department of business regulation provided for in section 82A-401.

Section 120. Section 51-106, R.C.M. 1947, is amended to read as follows:

"**51-106. Fair price for agricultural products, how determined.** *(1)* The following method shall be used in determining fair prices for agricultural products sold on local markets, in *a* trade area, district or city in which the major portion of *an* agricultural commodity or product is produced within or adjacent to *the* trade area, city or district:

(a) When seventy-five percent (75%) of producers of *an* agricultural product or commodity marketing *those* products or commodities within *a* trade area, district or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be *considered* the fair price for *that* product or commodity under the terms of this act.

(b) Those producers through their agents shall file with the *department the* fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of *the* agricultural products or commodities. Any organization representing consumers *may* not be denied representation at *the* meeting.

(2) After the establishment of a schedule of fair prices for *the* agricultural products or commodities, it *is* a violation of this act for *a* producer, jobber, wholesaler or retailer to sell or buy *an* agricultural commodity or product below *the* price established by the *department. That* action *is* punishable under the terms provided in this act."

Section 121. Section 51-113, R.C.M. 1947, is amended to read as follows:

"**51-113. Department — administration of act by — intervention — orders — review — appeals — process — finality of order.** (1) The *department shall* prevent *a* person, firm, or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice that *a* person, firm or corporation is violating or has violated any of the provisions of this chapter, the *department* shall immediately notify the person giving *that* notice either to appear *before the director of the department* or to make a written reply to show probable cause of *that* violation. If probable cause is shown, the *department* must *then* make its own investigation and within sixty (60) days of the finding

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of probable cause must make a written report of its investigation and must mail a copy of its findings to the person initially giving notice of a violation.

(3) If, after *an* investigation the *department has* reason to believe that *the* person, firm, or corporation has been or is engaging in any course of conduct or doing any act in violation of this chapter and if it *appears* to the *department* that a proceeding by it would be to the interest of the public, it shall issue and serve upon *the* person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of *the* complaint. *A* complaint may be amended by the *department* in its discretion at any time five (5) days prior to the issuance of an order based *on it.* The person, firm or corporation so complained of *may* appear at the place and time so fixed and show cause why an order should not be entered by the *department* requiring *that* person, firm, or corporation to *stop* the violation of the law charged in *the* complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the *department* to intervene and appear in *the* proceeding by counsel or in person. The testimony in *the* proceeding shall be reduced to writing and filed in the office of the *department.* If upon *the* hearing the *department believes* that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on *that* person, firm, or corporation an order requiring *that* person, firm, or corporation to *stop the* acts or conduct. Until a transcript of the record in *the* hearing *has* been filed in a district court, as hereinafter provided, the *department* may at any time, upon *the* notice and in *the* manner as it *considers* proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pending the suit.*

(5) To the extent that the order of the *department* is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of *the* order of the *department.*

(6) Proceedings in the district court shall be given precedence over other civil cases pending therein, and shall be in every way expedited.

(7) A person, firm, or corporation who violates an order of the *department* to cease and desist after it has become final, and while *the* order is in effect shall forfeit and pay to *this* state a penalty of not more than one thousand dollars *($1,000)* for each violation, which shall accrue to *this* state and may be recovered in a civil action brought by *this* state.

(8) The remedies and method of enforcement of this chapter provided for in this section *are* concurrent and in addition to the other remedies provided in this chapter."

Section 122. Section 51-114, R.C.M. 1947, is amended to read as follows:

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"**51-114. Procedure for establishing cost survey — hearing — notice.** (1) The *department shall,* whenever application *has* been made by ten *(10)* or more persons, firms, or corporations within *a* particular trade or business, establish the cost survey provided for in section 51-105. When petition for *a* cost survey has been so presented to the *department,* the *department* shall, as soon as possible, fix a time for a public hearing upon the question of whether *the* cost survey should be established. *The* hearing shall be held at the office of *the department* and upon *that* notice *which* the *department* may by rule require. *However,* notice of *the* hearing shall be published for at least two *(2)* successive weeks in *the* daily newspaper or newspapers as the *department* may designate as most commonly circulated in the counties to be affected by *the* cost survey. *The* notice shall further state the locality or area in respect to which *the* cost survey is proposed to be established and the particular trade or business to be affected *by it.*

(2) At the time fixed in *the* notice any person, firm, or corporation *may* appear and be heard by the *department* upon all questions to be determined by it as provided in this section. If the *department determines* that a cost survey shall be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which *the* trade or business shall be affected, and find and determine the probable "cost of doing business" or "overhead expense," stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person, firm, or corporation *in the* trade or business within *the* area.

(3) *Where* the *department determines* that the probable "cost of doing business" or "overhead expense," stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person, firm, or corporation in *the* trade or business is the same for the entire state, then the *department* may, upon proper notice given as provided *in this section,* create one trade area *embracing* the entire state.

(4) The percentage so determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person, firm, or corporation in *the* trade or business and within the area affected by *the* cost survey."

Section 123. Section 51-115, R.C.M. 1947, is amended to read as follows:

"**51-115. Hearings and investigations — contempts.** The *department* for the purpose of conducting hearings and investigations which, in the opinion of the *department,* are necessary and proper for the exercise of the powers vested in it by this chapter *has* the following powers:

(1) The *department* shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of *a* person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the *department may* issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation

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or in question, before the *department*, or before its duly authorized agent conducting the investigation. *An* agent, duly authorized by the *department* for *those* purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. *The* attendance of witnesses and the production of evidence may be required from any place *in this* state at any designated place of hearing.

(2) In any case of contumacy or refusal to obey a subpoena issued to *a* person, any district court of *this* state, within any district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the *department has* jurisdiction to issue to *that* person, an order requiring *him* to appear before the *department*, or its duly authorized agent, and there to produce evidence if so ordered, or there to give testimony *regarding* the matter under investigation. *Failure* to obey *the* order of the court may be punished by *the* court as a contempt.

(3) A person *may not* be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the *department*, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. *An* individual *may not* be prosecuted or subjected to *a* penalty or forfeiture for or on account of *a* transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, except that *an* individual so testifying *is* not exempt from prosecution and punishment for perjury committed in testifying."

Section 124. Section 51-116, R.C.M. 1947, is amended to read as follows:

"**51-116. Alteration of invoices unlawful.** It *is* unlawful for *a* person, partnership, firm, corporation, joint stock company, or other association, as defined in section 51-103, to change, alter, substitute, or falsify *an* invoice where *the* practice tends to injure a competitor or to destroy competition or to mislead *a* court or *the department of business regulation. That* practice is unfair trade practice and *a* person, firm, partnership, corporation, or association resorting to *that* trade practice *is* guilty of a misdemeanor and *is* subject to the penalties provided in section 51-112."

Section 125. Section 60-203.1, R.C.M. 1947, is amended to read as follows:

"**60-203.1. "Department" defined.** *Unless the context requires otherwise, in this act, "department"* means the *department of business regulation provided for in Title 82A, chapter 4.*"

Section 126. Section 60-203.2, R.C.M. 1947, is amended to read as follows:

"**60-203.2. Enforcement of chapter — rules.** *This* chapter shall be enforced by the *department. It* may *adopt* necessary and reasonable rules for the interpretation of the provisions and intent of this chapter, and *those rules* have the force and effect of law."

Section 127. Section 60-217, R.C.M. 1947, is amended to read as follows:

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"**60-217. Samples of product may be taken by department or user — inspection by department — interference with inspections — inspectors — employment.** *(1)* For the purpose of obtaining information regarding suspected violation of this act, *the department* shall have access to all places where the commodities *subject to regulation under this act* are sold, offered for sale or kept for sale, manufactured, transported, or stored, and may take samples for analysis *upon* tendering payment *for them.*

(2) A user or customer *may,* upon tendering payment, receive from *a* dealer a sample of *a* commodity sold for *the* purpose of having *an* analysis and *a* test made by the *department.*

(3) The *department may* inspect any of the commodities *subject to this act,* whether *they* originate at points *outside* the state or otherwise and whether *they* are in transport or at rest in places where they are dangerous to human life or public safety.

(4) A person obstructing *an* entry or inspection authorized by this section, or failing upon request to assist *in it is* in violation of this act. The *department* shall employ from time to time *those* inspectors *it considers* necessary to carry out this act."

Section 128. Section 60-219, R.C.M. 1947, is amended to read as follows:

"**60-219. Revocation of license for violations — hearing required.** If the *department finds* that *a* dealer operating under this act has violated any of the provisions *of it,* or of any lawful order or decision of the *department, adopted* pursuant to this act, *it* shall, after due hearing, noticed for not less than ten *(10)* days, revoke, cancel, or suspend any license. *The* revocation, cancellation or suspension, may be conditioned on *those* terms *which* the *department considers* just and proper."

Section 129. Section 60-220, R.C.M. 1947, is amended to read as follows:

"**60-220. Revocation of license of petroleum dealers for unreasonable or discriminatory prices — procedure.** The *department may* revoke the license to engage in the business of selling gasoline and other petroleum products *in this* state, issued to *a* person, firm, partnership, association, or corporation, where *that* person, firm, partnership, association, or corporation is by *the department* found guilty of charging an exorbitant or unreasonable price for gasoline sold *in this* state to residents of the state, or of discriminating between individuals or localities *in this* state in the prices charged for gasoline, or of discriminating between citizens of this state and citizens of adjoining states, to the disadvantage of the former, in the prices charged for gasoline. Anybody aggrieved by the action of *a* person, firm, partnership, association, or corporation in charging an exorbitant or unreasonable price for gasoline or in discriminating between individuals or localities or in discriminating between citizens of this state and citizens of adjoining states may file written charges with *the department* against *the* person, firm, partnership, association, or corporation. *The department* shall *then* issue a citation to *the* person, firm, part-

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nership, association, or corporation to show cause before *it* within twenty *(20)* days why his, their, or its license should not be revoked. *The* person, firm, partnership, association, or corporation may appear by counsel at the hearing and contest the charge. If the charge *is* established by a preponderance of the evidence the commissioner shall make an order revoking the license, otherwise the charge shall be dismissed. Nothing provided in this act is intended to interfere with or regulate commerce between states, the legislature in passing *this act* being actuated solely by a desire to protect the citizens of *this state* against imposition."

Section 130. Section 60-223, R.C.M. 1947, is amended to read as follows:

"60-223. Petroleum products dealers — definition of terms. *Unless the context requires otherwise in sections 60-223 through 60-233:*

(1) "Sell" and "sale" *means* barter and exchange.

(2) "Dealer" means all persons, firms, copartnerships, corporations, trusts, or agencies.

(3) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale *in this* state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, and greases, or any oil or gas or oil and gas product, except as otherwise defined as a liquefied petroleum dealer in subsection *(4)*.

(4) "Liquefied petroleum *dealer" means* a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale *in this* state any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

(5) "Department" means the department of business regulation provided for in Title 82A, chapter 4."

Section 131. Section 60-224, R.C.M. 1947, is amended to read as follows:

"60-224. License required as a condition precedent to the right to do business. *A* petroleum dealer or liquefied petroleum dealer *may not* do business in *this* state until a nontransferable license has been issued to *him* by the *department. The* license shall be obtained by the dealer by making application to the *department* upon blank forms provided by the *department* for the right to do business in *this* state, and after the application has been filed, the license, without fee, shall be issued. *A* dealer who has not been issued a license for the right to do business in *this* state by the *department* and who is found selling or offering for sale or delivering or distributing to a consumer shall, upon conviction, be fined as provided by this act. *A* vehicle tank, or vehicle tank and meter, or any other measuring device used by *that* dealer for *the* delivery or distribution may be confiscated and seized as evidence by the *depart-*

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ment. The *department and its employees and agents are* not liable to the owner or any other persons, firms, copartnerships, corporations, trusts, or agencies for damages, directly or indirectly, caused by or resulting from *the* seizure."

Section 132. Section 60-228, R.C.M. 1947, is amended to read as follows:

"**60-228. Petroleum and liquefied petroleum vehicle tank license fees.** *(1)* The license fee for all petroleum or liquefied petroleum vehicle tanks without meters used for distribution of *those* products *is* as follows: Up to and including two hundred (200) gallons, eight dollars ($8); over two hundred (200) and including three hundred (300) gallons, ten dollars ($10); over three hundred (300) and including five hundred (500) gallons, twelve dollars ($12); over five hundred (500) and including one thousand (1,000) gallons, sixteen dollars ($16); over one thousand (1,000) and including two thousand (2,000) gallons, twenty dollars ($20); for each additional one thousand (1,000) gallons over two thousand (2,000) gallons, four dollars ($4).

(2) All licenses *are* annual and nontransferable and expire December 31. There *is* an additional charge of fifty per cent (50%) on all license fees, required by this act, that are not paid before March 1 of each year, where the vehicle tank, or meter, or measuring device is in use. If *the* fee is not paid the equipment shall be sealed and removed from service, by the *department,* and it *is unlawful* for anyone to use the device or break the seal until all *the* fees have been paid."

Section 133. Section 60-229, R.C.M. 1947, is amended to read as follows:

"**60-229. Dispensation of petroleum products.** It *is* unlawful to make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the *department.* Part of a compartment delivery can only be made by an approved, calibrated, and sealed meter or an approved can. Gauge stick measurement will not be permitted. All tank markers must be positioned and sealed as provided by the *department.* The *department* shall, by proper regulation, fix fees for retesting meters or measuring devices or vehicle tanks used for distribution to a consumer by petroleum or liquefied petroleum dealers, and for any other special service rendered."

Section 134. Section 60-230, R.C.M. 1947, is amended to read as follows:

"**60-230. Dispensation of liquefied products.** It *is* unlawful to sell or deliver liquefied petroleum to a consumer, as a liquid, except as provided by this act. Full compartment sales or deliveries may only be made in a manner that shall be provided by the *department.* All other sales or deliveries may only be made through a meter which has been approved, calibrated and sealed by the *department,* or by weight, unless otherwise provided by the *department.*"

Section 135. Section 60-231, R.C.M. 1947, is amended to read as follows:

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"**60-231. Temperature correction of liquefied petroleum to sixty degrees (60°) Fahrenheit when sold to a consumer.** It *is unlawful* to sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or by liquid measurement, the measurement of which has not been temperature corrected to sixty degrees (60°) Fahrenheit, unless otherwise provided by the *department.* Temperature correction shall only be made by means of an automatic compensating device which has been approved, calibrated, and sealed by the *department*; or by weight as provided by the *department.*"

Section 136. Section 60-232, R.C.M. 1947, is amended to read as follows:

"**60-232. Rules and standards.** The *department may* adopt *those* rules and standards *it considers* necessary for the administration and enforcement of this act."

Section 137. Section 74-602, R.C.M. 1947, is amended to read as follows:

"**74-602. Definitions.** *(1)* Unless the context *requires otherwise*, in this act:

(a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable *from it.*

(b) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(c) "Motor vehicle" means any new or used automobile, mobile home, motorcycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting however, any vehicle which runs only on rails or tracks or in the air.

(d) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(e) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(f) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of goods or services, by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(g) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made *under it* from time to time *under* which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the

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purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller, and under the terms of which a finance charge, as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(h) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state *under* which a buyer promises to pay in one or more deferred installments the time sale price of goods *or* services, *or both.* The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(i) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if *the* sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing, or improving the goods.

(j) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(k) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made therefor and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(l) "Finance charge" means the amount, as limited by section 74-608, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(m) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits if a separate identified charge is made therefor and the amounts of the official fees and the finance charge.

(n) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes, but is not limited to, a bank, trust

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company, investment company, or savings and loan association, if so engaged. The term *does* not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(o) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement, or a person who establishes and administers retail charge account agreements with retail buyers, the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred, or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(p) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(q) *"Department"* means the *department of business regulation provided for in Title 82A, chapter 4.*

(2) This act *does not apply* to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by *those* banks or other lending institutions. *However,* this act pertains to the extension of credit by *those* banks or other lending institutions *under* retail installment contracts or credit cards issued by *those* banks or other lending institutions."

Section 138. Section 74-604, R.C.M. 1947, is amended to read as follows:

"74-604. Denial, suspension, or revocation of licenses. (a) Renewal of a license originally granted under *section 74-603* may be denied, or a license may be suspended or revoked by the *department* on the following grounds: (1) Material misstatement of fact in the application for license; (2) willful failure to comply with any provision of this act relating to retail installment contracts; (3) defrauding any retail buyer to the buyer's damage; (4) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(b) If a licensee is a partnership, association, or corporation, it *is* sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation, or any member of a licensed partnership, has acted or failed to act *so* as *to provide* cause for suspending or revoking a license to *that* party as an individual. Each licensee *is* responsible for the acts of his employees while acting as his agent, if *the* licensee after actual knowledge of *the* acts retained the benefits, proceeds, profits, or advantage accruing from *the* acts or otherwise ratified *the* acts.

(c) *A* license *may not* be denied, suspended, or revoked, except after hearing. The *department* shall give the licensee at least ten (10) *days* written notice, in the form of an order to show cause, of the time and place

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of *the* hearing by registered mail addressed to the principal place of business in this state of *the* licensee. The notice shall contain the grounds of complaint against the licensee. *An* order suspending or revoking *a* license shall recite the grounds upon which *it* is based. The order shall be entered upon the records of the *department* and *is* not effective until thirty (30) *days after* written notice *has been* forwarded by registered mail to the licensee at *the* principal place of business. No revocation, suspension, or surrender of *a* license *impairs* or *affects* the obligation of *a* lawful retail installment contract acquired previously by the licensee."

Section 139. Section 74-605, R.C.M. 1947, is amended to read as follows:

"**74-605. Investigations and complaints.** (a) The *department may* make *those* investigations *it considers* necessary and, to the extent necessary for this purpose, *it* may examine *a* licensee or any other person and *may* compel the production of relevant books, records, accounts, and documents.

(b) *A* retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the *department* a written complaint setting forth the details of *the* alleged violation and the *department*, upon receipt of *the* complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved."

Section 140. Section 74-606, R.C.M. 1947, is amended to read as follows:

"**74-606. Powers of department.** (a) The *department* shall adopt rules necessary to carry out the intent and purposes of this act. All rules of general application shall be filed in the office of the *department.* A copy of every rule shall be mailed to each licensee, postage prepaid, at least fifteen (15) days in advance of its effective date. *However*, the failure of a licensee to receive a copy of *the* rules *does* not exempt him from the duty of compliance with *those* rules lawfully *adopted under the provisions of this section.*

(b) The *department may* issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before *it* in any matter over which *it* has jurisdiction, control, or supervision pertaining to this act. The *department may* administer oaths and affirmations to *a* person whose testimony is required.

(c) If *a* person *refuses* to obey *a* subpoena, or to give testimony, or to produce evidence as required *by it, a* judge of the district court of the county in which the licensed premises are located may, upon application and proof of *the* refusal, *issue a* subpoena or subpoena duces tecum for the witness to appear before the *department* and to give testimony, and to produce evidence as required *by it. The* clerk *of court* shall *then* issue *the* subpoena, as directed, under the seal of *the* court, requiring the person to whom it is directed to appear at the time and place designated *in it.*

(d) If *a* person served with *a* subpoena *refuses* to obey *it, or* to give testimony, *or* to produce evidence as required *by it,* the *department* may

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apply to the judge of the court issuing *the* subpoena for an attachment against *that* person, as for a contempt. The judge, upon satisfactory proof of *the* refusal, shall issue an attachment, directed to any sheriff, constable, or police officer, for the arrest of *that* person, and upon his being brought before *the* judge, proceed to a hearing of the case. The judge *may* enforce obedience to *the* subpoena, and the answering of any question, and the production of any evidence that may be proper by a fine, not exceeding one hundred dollars ($100), or by imprisonment in the county jail, or by both fine and imprisonment, and to compel *the* witness to pay the costs of *the* proceeding."

Section 141. Section 82A-401, R.C.M. 1947, is amended to read as follows:

"**82A-401. Department of business regulation — head.** There is a department of business regulation. The department head is *a director of business regulation appointed by the governor in accordance with section 82A-106.*"

Section 142. There is a new R.C.M. section numbered 82A-401.1 that reads as follows:

82A-401.1. Functions of department. The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) Banks and banking (Title 5, chapters 1 through 14);

(2) Building and loan associations (Title 7, chapter 1);

(3) Credit unions (Title 14, chapter 1);

(4) Consumer protection (Title 85, chapter 4);

(5) Supervision of the milk industry (Title 27, chapter 4);

(6) Consumer loans (Title 47, chapter 2);

(7) Sale and marketing of coal (Title 50, chapter 6);

(8) Unfair business practices (Title 51, chapter 1);

(9) Regulation of petroleum products (Title 60, chapter 2);

(10) Retail installment sales (Title 74, chapter 6);

(11) Standard weights and measures (Title 90, chapter 1);

(12) Proprietary post-secondary educational institutions (Title 75, chapter 92).

Section 143. Section 82A-406, R.C.M. 1947, is amended to read as follows:

"**82A-406. Board of milk control — qualifications — allocated — designation.** (1) *There is a* board of milk control.

(2) The board consists of five (5) members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held

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an elective or appointive public office during the two (2) years immediately preceding his appointment, and a member may not hold a public office, either elective or appointive, during his term on the board. Not more than three (3) members may be of the same political party or residents of the same congressional district.

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 144. Section 86-703, R.C.M. 1947, is amended to read as follows:

"**86-703. Report of institution holding deposited money.** *A* banking institution, or savings or building and loan association, receiving money in trust under section 86-702, shall report to the *department of business regulation* before February *1* of each year, all amounts received and held in trust. This report shall show the name and address of each trustee and cestui que trust, the principal amount remaining and the interest or dividends paid on each such account."

Section 145. Section 89-1708, R.C.M. 1947, is amended to read as follows:

"**89-1708. Delivery of bonds — disposition of proceeds.** *If* bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county *in which* the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price, and after making a complete record of *them*. Delivery of the bonds may be made by the county treasurer to the purchaser at any place or places *inside* or *outside this* state, and *the* county treasurer may receive the proceeds of the sale of *the* bonds at *the* place or places of delivery. The county treasurer shall place the proceeds of *the* sale to the credit of *the* district, and the *proceeds* shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. *The* proceeds shall be *spent only* for the purpose for which *the* bonds were issued. *If* any portion of the funds realized from the sale of bonds *is* not needed immediately for the purpose for which *the* bonds were issued, the board of commissioners *may* direct the investment of *the* funds, and any other surplus funds of the district, of any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the *department of community affairs. A bank* shall furnish an indemnity bond to be approved by *the* board of commissioners and the *department of community affairs*. The county treasurer shall transfer to the credit of the district, and place to the credit of *the* fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care."

Section 146. Section 90-153, R.C.M. 1947, is amended to read as follows:

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"90-153. **Meaning of terms.** *Unless the context requires otherwise,* in this act:

(1) *"Person" includes* individuals, partnerships, corporations, companies, societies, and associations.

(2) *"Weight," "measure," and "weights and measures"* mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with *those* instruments and devices. *The terms do* not include meters for the measurement of electricity, gas (natural or manufactured), or water when *they* are operated in a public utility system. *None* of the provisions of this act apply to *electricity, gas, or water* meters *operated in a public utility system* or to any appliances or accessories associated *with them.*

(3) *"Sell"* and "sale" *include, but are not limited to,* barter and exchange.

(4) *"Department" means* the *department of business regulation provided for in Title 82A, chapter 4.*

(5) "Intrastate commerce" *means* any commerce or trade that is begun, carried on, and completed wholly *in this* state, and the phrase "introduced into intrastate commerce" *defines* the time and place at which the first sale and delivery of a commodity is made *in this* state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(6) "Commodity in package form" *means a* commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, *is a* commodity in package form.

(7) "Consumer package" or "package of consumer commodity" *means* a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(8) "Nonconsumer package" or "package of nonconsumer commodity" *means a* commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(9) "Barrel," when used in connection with fermented liquor, means a unit of thirty-one (31) gallons.

(10) "Ton" means a unit of two thousand (2,000) pounds avoirdupois weight.

(11) "Cord," when used in connection with wood intended for fuel pur-

poses, means the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.

(12) "Weight," when used in connection with any commodity, means net weight."

Section 147. Section 90-156, R.C.M. 1947, is amended to read as follows:

"90-156. State standards of weight and measure. *Those* weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by *this state* for use as state standards shall, when *they* have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the *department. They* shall not be removed from *there* except for repairs or for certification, and they shall be submitted at least once in ten *(10)* years to the national bureau of standards for certification."

Section 148. Section 90-159, R.C.M. 1947, is amended to read as follows:

"90-159. General powers and duties of department. The *department* shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall keep accurate records of *them.* The *department* shall enforce the provisions of this act. *It* shall *supervise* the weights and measures offered for sale, sold, or in use in *this* state."

Section 149. Section 90-160, R.C.M. 1947, is amended to read as follows:

"90-160. Specific powers and duties of department — rules. The *department* shall *adopt* from time to time reasonable *rules* for the enforcement of this act, which *rules* have the effect of law. These *rules* may include (1) schedules of fees for testing and certification, (2) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (3) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by *the department* in the discharge of *its* official duties, (4) exemptions from the sealing or marking requirements of section *90-166* with respect to weights and measures of *a* character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus *involved,* and (5) rules governing the voluntary registration of servicemen and service agencies. These *rules* shall include specifications, tolerances, and other technical requirements for weights and measures *subject to inspection and testing under* section *90-162,* designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and other technical requirements for commercial weighing and measuring

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devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards handbook 44 and supplements thereto, or in any publication revising or superseding handbook 44, *are* the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of *this* state, except in so far as specifically modified, amended, or rejected by a *rule* issued by the *department. An* apparatus shall be *considered* to be "correct" when it conforms to all applicable requirements *adopted* as specified in this section. Other apparatus shall be *considered* to be "incorrect.""

Section 150. Section 90-161, R.C.M. 1947, is amended to read as follows:

"**90-161. Department — testing at state-supported institutions.** The *department* shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting *its* findings, in writing, to the executive officer of the institution concerned."

Section 151. Section 90-162, R.C.M. 1947, is amended to read as follows:

"**90-162. Department — general testing.** When not otherwise provided by law, the *department may* inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. *The department*, within a twelve-month period or less frequently if in accordance with a schedule issued by *it*, and as *often* as *it considers* necessary, *shall* inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count. *With* respect to single-service devices designed to be used commercially only once and to be then discarded and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of *the* devices; and the lots of which *the* samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on *the* samples. *An* itinerant peddler or hawker, using weights and measures, shall register his name and address with the *department*, in order that his equipment can be tested in accordance with the provisions of this law."

Section 152. Section 90-163, R.C.M. 1947, is amended to read as follows:

"**90-163. Department — investigations.** The *department* shall investigate complaints made to *it* concerning violations of this act. *It* shall, upon *its* own initiative, conduct *those* investigations *it considers* appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions."

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Section 153. Section 90-164, R.C.M. 1947, is amended to read as follows:

"**90-164. Department — inspection of packages.** The *department* shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether *they* contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When *those* packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the *department* may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the *department* may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of *that* lot. *A* person *may not:*

(1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless *the* package or amount of commodity has been brought into full compliance with all legal requirements, or

(2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the *department.*"

Section 154. Section 90-165, R.C.M. 1947, is amended to read as follows:

"**90-165. Department — stop-use, stop-removal, and removal orders.** The *department may* issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of enforcement of this act *it considers* it necessary or expedient to issue *those* orders. *A* person *may not* use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under this section."

Section 155. Section 90-166, R.C.M. 1947, is amended to read as follows:

"**90-166. Department — disposition of correct and incorrect apparatus.** The *department* shall approve for use, and seal or mark with appropriate devices, *those* weights and measures *which it* finds upon inspection and test to be "correct" as defined in section *90-160,* and shall reject and mark or tag as "rejected" *those* weights and measures *which it* finds, upon inspection or test, to be "incorrect" as defined in section *90-160,* but which in *its* best judgment are susceptible of satisfactory repair. *Sealing* or marking *are* not required with respect to *those* weights

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and measures *which* may be exempted therefrom by a *rule* of the *department* issued under section *90-160.* The *department* shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in *its* best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the *department* if not corrected as required by section *90-169*, or if used or disposed of contrary to the requirements of section *90-169.*"

Section 156. Section 90-167, R.C.M. 1947, is amended to read as follows:

"**90-167. Department — police powers.** *In enforcing the provisions of this act or any other law pertaining to weights and measures, the department may, in the manner provided by law for peace officers, arrest violators, conduct searches and inspections, and seize for use as evidence incorrect or unsealed weights and measures or packages of commodities unlawfully used, possessed, offered, or exposed for sale or unlawfully sold.*"

Section 157. Section 90-169, R.C.M. 1947, is amended to read as follows:

"**90-169. Duty of owners of incorrect apparatus.** Weights and measures that have been rejected under the authority of the *department* shall remain subject to the control of the *department* until suitable repair or disposition *of them* has been made as required by this section. The *owner* of rejected weights and measures shall correct *them* within thirty (30) days or *a* longer period as may be authorized by the *department. In place* of this, *the owner* may dispose of *them*, but only in *a* manner specifically authorized by the *department.* Weights and measures that have been rejected *may* not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for *that* use is issued by the *department*, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person *properly* registered to perform *those* acts under a *rule* issued by the *department* for the registration of weights and measures servicemen and service agencies."

Section 158. Section 90-170, R.C.M. 1947, is amended to read as follows:

"**90-170. Method of sale of commodities — general.** Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count. *Liquid* commodities may be sold by weight and commodities not in liquid form may be sold by count only if *those* methods give accurate information as to the quantity of commodity sold. *This* section *does* not apply:

(1) to commodities when sold for immediate consumption on the premises where sold,

(2) to vegetables when sold by the head or bunch,

(3) to commodities in containers standardized by a law of this state or by federal law,

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(4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner,

(5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or

(6) to unprocessed vegetable and animal fertilizer when sold by cubic measure.

The *department* may *adopt* reasonable *rules* necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest."

Section 159. Section 90-171, R.C.M. 1947, is amended to read as follows:

"**90-171. Method of sale of commodities — packages — declarations of quantity and origin — variations — exemptions.** *(1)* Except as otherwise provided in this act, *a* commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package definite, plain, and conspicuous declarations of*: (a)* the identity of the commodity in the package unless *it* can easily be identified through the wrapper or container, *(b)* the net quantity of the contents in terms of weight, measure, or count, and *(c)* in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by *rules adopted* by the *department.*

(2) In connection with the declaration required under *subsection 1(b),* neither the qualifying term "when packed," *nor words* of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package *may* be used.

(3) Under subsection 1(b) the *department* shall, by *rule,* establish: (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

(4) The marking provisions of this section do not apply to unwrapped loaves of bread or to berries and small fruits, sold in conformance with the applicable provisions of this act."

Section 160. Section 90-173, R.C.M. 1947, is amended to read as follows:

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"**90-173. Method of sale of commodities — misleading packages.** *A* commodity in package form *may not* be wrapped, *or* in a container made, formed, or filled, *so* as to mislead the purchaser as to the quantity of the contents of the package. *The* contents of a container *may* not fall below *a* reasonable standard of fill *which* may *be* prescribed for *that* commodity by the *department.*"

Section 161. Section 90-175, R.C.M. 1947, is amended to read as follows:

"**90-175. Sale by net weight.** *When a* commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed."

Section 162. Section 90-178, R.C.M. 1947, is amended to read as follows:

"**90-178. Bread.** Each loaf of bread and each unit of a twin or multiple loaf of bread *produced* or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh one-half (½) pound, one (1) pound, one and one-half (1 ½) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be *adopted* by *rules of* the *department. This* section *does* not apply to biscuits, buns, or rolls weighing eight (8) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such."

Section 163. Section 90-182, R.C.M. 1947, is amended to read as follows:

"**90-182. Bulk deliveries sold in terms of weight and delivered by vehicle.** When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing: (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds. *If* the net weight is derived from determinations of gross and tare weights, *the* gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the *department. If the department* desires to retain it as evidence, *it* shall issue a weight slip in *place of the ticket* for delivery to the purchaser. *If* the purchaser himself carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him."

Section 164. Section 90-184, R.C.M. 1947, is amended to read as follows:

"**90-184. Berries and small fruits.** Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half (½) dry pint, one (1) dry pint, or one (1) dry quart."

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Section 165. Section 90-186, R.C.M. 1947, is amended to read as follows:

"**90-186. Hindering or obstructing officer — penalties.** *A* person who *hinders* or *obstructs* in any way the *department*, in the performance of *its* official duties *is* guilty of a misdemeanor, and upon conviction shall be *fined* not less than twenty dollars *($20)* or more than two hundred dollars *($200)*, or *imprisoned* not more than three (3) months, or both *fined* and *imprisoned.*"

Section 166. Section 90-187, R.C.M. 1947, is amended to read as follows:

"**90-187. Impersonation of officer — penalties.** *A* person who *impersonates* in any way *a person charged with enforcement of this act by the department*, by the use of *its* seal or a counterfeit of *its* seal, or in any other manner, *is* guilty of a misdemeanor, and upon conviction shall be *fined* not less than one hundred dollars *($100)* or more than five hundred dollars *($500)*, or *imprisoned* for not more than one (1) year, or both *fined* and *imprisoned.*"

Section 167. Section 90-188, R.C.M. 1947, is amended to read as follows:

"**90-188. Offenses and penalties.** (1) *A person may not:*

(a) Use or *possess* for the purpose of using for *a* commercial purpose specified in section *90-162*, sell, offer, or expose for sale or hire, or *possess* for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure;

(b) Use, or *possess* for the purpose of current use for *a* commercial purpose specified in section *90-162*, a weight or measure that does not bear a seal or mark specified in section *90-166*, unless *that* weight or measure has been exempted from testing by section *90-162* or by a *rule* of the *department* issued under section *90-160*, or unless the device has been placed in service as provided by a *rule* of the *department* issued under section *90-160. A* person *using* weighing or measuring devices subject to this act must report to the *department*, in writing, the number and location of *the* weighing or measuring device and must promptly report the installation of any new weighing or measuring device;

(c) Dispose of *a* rejected or condemned weight or measure in a manner contrary to law or *rule;*

(d) Remove from *a* weight or measure, contrary to law or *rule*, any tag, seal, or mark placed *on it* by the appropriate authority;

(e) Sell, or offer or expose for sale, less than the quantity he represents of *a* commodity, thing, or service;

(f) Take more than the quantity he represents of *a* commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined;

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(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell *a* commodity, thing, or service in a condition or manner contrary to law or *rule;*

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

(i) Violate *a* provision of this act or of the *rules adopted* under this act for which a specific penalty *is* not prescribed.

(2) A person who violates, or who knowingly allows an employee or agent to violate, this section is guilty of a misdemeanor and, upon a first conviction, shall be fined not less than twenty dollars ($20) or more than two hundred dollars ($200), or imprisoned for not more than three (3) months, or both fined and imprisoned. Upon a second or subsequent conviction, he shall be fined not less than fifty dollars ($50) or more than five hundred dollars ($500), or imprisoned for not more than one (1) year, or both fined and imprisoned."

Section 168. Section 90-189, R.C.M. 1947, is amended to read as follows:

"**90-189. Injunction.** The *department may* apply to any court of competent jurisdiction for, and *that* court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining *a* person from violating any provision of this act."

Section 169. Section 90-190, R.C.M. 1947, is amended to read as follows:

"**90-190. Presumptive evidence.** For the purposes of this act, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on, *is*, in the absence of *credible* evidence to the contrary, presumptive proof of the regular use of *that* weight or measure or weighing or measuring device for commercial purposes and of *the* use by the person in charge of *the* building, enclosure, stand, or vehicle."

Section 170. Wherever the words "superintendent," "superintendent of banks," or "state superintendent of banks" appear in sections 5-205, 5-206, 5-207, 5-209, 5-211, 5-510, 5-704, 5-803, 5-908, 5-909, 5-1006, 5-1014, 5-1020, 5-1025, 5-1026, 5-1027, 5-1028, 5-1029, 5-1030, 5-1032, 5-1036, 5-1046, 5-1130, 5-1204, 7-104, 7-105, 7-107, 7-113.1, 7-124, 7-128, 7-129, 7-137, 7-151, 74-603, the word "department" is substituted therefor.

Section 171. Wherever the words "superintendent of banks" appear in section 5-1021, the words "state banking board" are substituted therefor.

Section 172. Wherever the words "consumer loan commissioner" or "commissioner" appear in sections 47-205, 47-208, 47-209, 47-212, 47-216, 47-217, 47-221, 47-224, 47-226, 47-227, the word "department" is substituted therefor.

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Section 173. Wherever the words "commissioner of agriculture" or "commissioner" appear in sections 60-203.3, 60-204, 60-205, 60-210, 60-211, 60-212, 60-213, 60-214, the word "department" is substituted therefor.

Section 174. Wherever the word "board" appears in sections 51-113, 51-114, 51-115, the word "department" shall be substituted therefor.

Section 175. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the Supreme Court of Montana, to make the substitutions enumerated in sections 170, 171, 172, 173, and 174 of this act when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 176. Sections 5-108, 5-601 through 5-603, 5-606, 5-608, 5-902, 5-1009 through 5-1011, 5-1013, 5-1119 through 5-1121, 5-1301 through 5-1311, 7-152, 27-404, 27-418, 27-420, 27-425, 27-428, 27-429, 47-225, 82-1001 through 82-1011, 82A-402, 82A-403, 90-155, 90-158, 90-168, 90-193, 90-194, 90-621 are repealed.

Approved April 14, 1975.

CHAPTER NO. 432

AN ACT TO AMEND SECTIONS 75-7104, 75-7127, AND 75-7129, R.C.M. 1947, TO PROVIDE THAT THE EIGHT PERCENT (8%) DEBT LIMIT ON THE ISSUANCE OF SCHOOL DISTRICT BONDS SHALL NOT PERTAIN TO SPECIAL IMPROVEMENT DISTRICT OBLIGATIONS; TO PROVIDE FOR PAYMENT OF SPECIAL IMPROVEMENT DISTRICT ASSESSMENTS BY SCHOOL DISTRICTS FROM THE DEBT SERVICE FUND OF THE SCHOOL DISTRICT RATHER THAN FROM THE GENERAL FUND OF THE SCHOOL DISTRICT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7104, R.C.M. 1947, is amended to read as follows:

"**75-7104. Limitations on amount of bond issue.** (1) The maximum amount for which each school district shall become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is *eight percent (8%)* of the assessed value of the taxable property therein as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. *The eight percent (8%) maximum, however, shall not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district.* All bonds issued in excess of such amount shall be null and void, except as provided in subsection (2).

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When the total indebtedness of a school district has reached the *eight percent (8%)* limitation prescribed in this section, such school district shall have the power and authority to pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this title.

Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded shall be applied towards the payment of such bonds and the refunding bond issue shall be decreased accordingly.

(2) In the case of a school district within which a new major industrial facility which seeks to qualify for taxation as class seven (7) property under section 84-301, R.C.M. 1947, is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class seven (7) property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the *eight percent (8%)* limitation prescribed in subsection one (1). Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in subsection one (1) by a maximum of *eight percent (8%)* of the estimated assessed value of the taxable property of the new major industrial facility when completed. The estimated assessed value of the taxable property of the new major industrial facility shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district, and copy of the department's statement of estimated assessed value shall be printed on each ballot used to vote on a bond issue proposed under this subsection.

Pursuant to the agreement between the new major industrial facility and the school district, and as a precondition to qualifying as class seven (7) property, the new major industrial facility and its owners shall, in addition to such taxes as may be imposed by the school district on property owners generally pay so much of the principal and interests on the bonds provided for under this subsection as shall represent payment on an indebtedness in excess of the limitation prescribed in subsection one (1). After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in subsection one (1), the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than twenty (20) years which credit shall, as a total amount, be equal to the amount by which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

A major industrial facility is a facility, subject to the taxing power of the school district, whose construction or operation will increase the population of the district so as to impose a significant burden upon the resources of the district and to require construction of new school facilities. A significant burden is an increase in ANB of at least twenty percent (20%) in a single year."

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Section 2. Section 75-7127, R.C.M. 1947, is amended to read as follows:

"**75-7127. Preparation of debt service fund budget.** The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with section 75-6707 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees. *The trustees shall also include in the debt service fund of the preliminary budget the amount of money necessary to pay the special improvement district assessments levied against the school district which become due during the ensuing school fiscal year.* The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement *and the special improvement district assessments* for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of section 75-6710. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent shall be the final budget expenditure amount for the debt service fund of such school district."

Section 3. Section 75-7129, R.C.M. 1947, is amended to read as follows:

"**75-7129. Payment of debt service obligations by county treasurer and termination of interest.** The county treasurer shall maintain a separate debt service fund for each school district, and shall credit all tax moneys collected for debt service to such fund and use the moneys credited to such fund for the payment of debt service obligations in accordance with the school financial administration provisions of this Title.

The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as such interest or principal becomes due when the coupons or bonds are presented and surrendered for payment, *and shall pay all special improvement district assessments as the same become due.* If the bonds are held by the state of Montana, then all payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return such coupons or bonds to the county treasurer with his receipt. If the bonds are not held by the state of Montana, and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

Whenever any school district bond, or installment on school district bonds, shall become due and payable, interest shall cease on such date unless sufficient funds are available to pay such bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on such bond or installment shall continue until payment is made.

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Any installment on interest and principal on bonds held by the state, that is not promptly paid when due, shall draw interest at an annual rate of six per cent (6%) from the date due until actual payment, irrespective of the rate of interest on the bonds."

Section 4. This act is effective on passage and approval.

Approved April 14, 1975.

CHAPTER NO. 433

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ADMINISTER, SUPERVISE, AND COORDINATE CROPLAND SPRAYING PROGRAMS FOR INSECT PEST CONTROL; AUTHORIZING THE DEPARTMENT TO SHARE COSTS OF COOPERATIVE RANGELAND SPRAYING PROGRAMS; REVISING THE POWERS OF COUNTIES TO OPERATE INSECT PEST CONTROL PROGRAMS; INCREASING THE PERMISSIBLE LEVY FOR SUCH PROGRAMS; AMENDING SECTIONS 16-1149 THROUGH 16-1153, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 3-3501 that reads as follows:

3-3501. Definitions. As used in this chapter:

(1) "Cropland" means land used for the production of food and forage, including the headlands, ditches, and rights-of-way adjacent to such land.

(2) "Cropland spraying program" means the application of chemical or other substances to croplands for the purpose of destroying insect pests.

(3) "Condition of insect pest infestation" means a condition where an insect pest, as defined in section 16-1153, or combination of such pests, exists in cropland in such numbers and at such times as to destroy or substantially damage, or threaten to destroy or substantially damage, a significant part of the crop production in a county.

(4) "Department" means the department of agriculture.

(5) "Alternative control program" means a system of controlling insect pest populations through biological or other means not involving toxic chemicals.

Section 2. There is a new R.C.M. section numbered 3-3502 that reads as follows:

3-3502. Cropland spraying program — powers of department. The department may:

(1) employ permanent and seasonal personnel to administer this chapter;

(2) survey pest infestation conditions during appropriate seasons, and enter upon any croplands in the course of conducting such surveillance;

(3) determine, upon investigation, that a condition of insect pest infestation exists within a county;

(4) operate or contract for spraying services to counteract a condition of insect pest infestation, having first determined that a person contracting to supply such services is properly equipped to apply substances designated and approved by the department;

(5) conduct or coordinate simultaneous cropland spraying programs in two (2) or more contiguous counties.

Section 3. There is a new R.C.M. section numbered 3-3503 that reads as follows:

3-3503. Cropland spraying program — duties of department. The department shall:

(1) develop and publish a list of substances approved for all cropland spraying programs, which shall be the least harmful to beneficial insects among effective available substances;

(2) develop and publish technical guidelines for county-conducted cropland spraying programs;

(3) publish, upon finding that a condition of insect pest infestation exists within a county, notice of intent to conduct a cropland spraying program within that county, such notice to appear in a newspaper generally circulating in the county;

(4) conduct a cropland spraying program within a county, after notice of intent has been published, unless within two (2) weeks or such lesser time as the notice may specify, the board of county commissioners adopts a plan to conduct a cropland spraying program which is approved by the department;

(5) approve a county plan to conduct a cropland spraying program which is submitted in a timely manner, which conforms to the technical guidelines of the department, and which will counteract a condition of insect pest infestation in a timely manner;

(6) consider, prior to conducting or approving any cropland spraying program, whether an alternative control program would be as efficient as spraying on a ratio of total costs to total benefits and to state a summary of such consideration in a notice of intent published under subsection (3) of this section. If the alternative control program is more efficient, the department may conduct or approve such a program. In such event, any reference to cropland spraying program in this act includes the alternative control program.

Section 4. There is a new R.C.M. section numbered 3-3404 that reads as follows:

3-3404. Financing of cropland spraying program. (1) The costs of a cropland spraying program shall be apportioned one-third (⅓) to the

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state, one-third (⅓) to the county where the program is conducted, and one-third (⅓) to the owners of cropland in the county. Prior to implementation of any state or county cropland spraying program, the department and the board of county commissioners of any county for which the program is proposed, shall enter into a written agreement on the maximum amount of monies each shall appropriate or provide toward the proposed program. If either party does not sign and approve the agreement, the program may not be conducted.

(2) The board of county commissioners of any county for which a cropland spraying program is intended, shall appoint a three-member insect evaluation committee once the department has published its notice of intent. The members shall be composed of farmers and ranchers having lands within the proposed program area. The committee, prior to the deadline of the notice of intent or within seven days of publication, whichever is less, shall review the finding of fact provided by the department to determine whether an area cropland spraying program shall be conducted for the agricultural producers in the proposed program area. If the committee determines that an area cropland spraying program is needed, by independently substantiating the department's finding of fact that a condition of insect pest infestation exists, the county or department shall call for a meeting of producers, landowners and other potentially affected taxpayers within the proposed program area. The call for the meeting shall include public notice at least five (5) days in advance. If a majority of those attending the meeting approve the program, then all producers and landowners within the proposed program area shall be included in the spray program and shall be subject to payment for the program.

Individual farm and ranch landowners may formally petition by written affidavit protesting their inclusion within the proposed cropland spraying program. The department or county commissioners shall refrain from spraying any land petitioned to be excluded. Such excluded land remains subject to assessment under section 3-3505.

(3) If the department conducts the program, the department shall pay all costs of the program. The county shall pay its share and the landowners' share, as provided in section 3-3505, to the department for deposit in the appropriate fund.

(4) If the county conducts the program, the county shall pay all costs of the program, including its share. The department shall pay one-third (⅓) of the costs of the cropland spraying program from monies appropriated for that purpose to the county in which the program was conducted. The county treasurer shall collect the landowners' assessments as provided in section 3-3505.

Section 5. There is a new R.C.M. section numbered 3-3505 that reads as follows:

3-3505. Computation and collection of assessments on landowners. Each owner of cropland benefited under a cropland spraying program is liable for such portion of the landowners' share of the program costs as his cropland is a portion of all cropland within the county benefited by the program. The county treasurer shall compute each such land-

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owner's liability and mail a special assessment therefor to each landowner or his agent. This assessment is due and payable within thirty-two (32) days of mailing or thirty (30) days of receipt, if receipt is shown to be more than two (2) days after mailing. A delinquent assessment is a lien upon the land assessed.

Section 6. There is a new R.C.M. section numbered 3-3506 that reads as follows:

3-3506. Rangeland spraying programs — powers of department. The department may enter into agreements with the United States department of agriculture for cooperative programs to control insect pest infestation on rangeland and to share the costs of such programs, whenever funds have been appropriated and are available for that purpose.

Section 7. Section 16-1149, R.C.M. 1947, is amended to read as follows:

"16-1149. Destruction of insect pests by county commissioners. The board of commissioners of any county of this state, where there are any insect pests, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be, acting under the direction of the state *department of agriculture*, to poison, kill, catch, and exterminate insect pests within such county, and any such person so appointed *may fly over or* enter upon any farm, railroad right of way, grounds or, premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein."

Section 8. Section 16-1150, R.C.M. 1947, is amended to read as follows:

"16-1150. Compensation of appointees — manner of payment. Any person so appointed under the provisions of *section 16-1149* shall receive, *such compensation as the county commissioners agree to pay,* and warrants in payment thereof drawn on the general fund."

Section 9. Section 16-1151, R.C.M. 1947, is amended to read as follows:

"16-1151. Purchase or hiring of poison and equipment — manner of payment. The board of county commissioners of any county may, from time to time, purchase *or contract to hire* such quantities and amounts of poisons, traps and other equipment necessary to poison, kill, catch or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund."

Section 10. Section 16-1152, R.C.M. 1947, is amended to read as follows:

"16-1152. Tax levy for payment of warrants. The board of county commissioners shall annually determine the amount of such warrants drawn on the general fund for the purposes of *controlling insect pests under a cropland spraying program approved by the department of agriculture,* and the succeeding year, shall levy a tax for the purpose of insect pest extermination sufficient in amount to reimburse said general fund for the money so paid out on such warrants, which said tax shall be levied

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upon all the property in the county and shall not exceed *three (3) mills* on each dollar of assessed valuation. If there be no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants, but in such case the interest shall be computed and added to the amount for which such tax is levied."

Section 11. Section 16-1153, R.C.M. 1947, is amended to read as follows:

"16-1153. "Insect pest" defined. The term "insect pest" as used in this act shall include grasshopper, cutworm, pale western cutworm, army worm, chinch bug and any other insect *or arthropod* generally recognized as a destroyer of grain, hay, *range,* and horticultural crops."

Section 12. **Effective date.** This act is effective on its passage and approval.

Approved April 14, 1975.

CHAPTER NO. 434

AN ACT TO DESIGNATE THE STATE BOARD OF EDUCATION AS THE STATE BOARD OF VOCATIONAL EDUCATION THAT SHALL APPOINT AN ADMINISTRATIVE COMMITTEE RESPONSIBLE FOR ADMINISTERING VOCATIONAL EDUCATION AND HIRING THE EXECUTIVE OFFICER FOR VOCATIONAL EDUCATION; AMENDING SECTIONS 75-5607, 75-5617, 75-5707, 75-7701 THROUGH 75-7704, 75-7706 THROUGH 75-7710, 75-7712, 75-7714, 75-7715, AND 75-7303, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7702, R.C.M. 1947, is amended to read as follows:

"75-7702. Duties of the state board of vocational education. *The state board of education shall be designated as the state board of vocational education. (1)* The *state* board of *vocational* education shall adopt policies to effect the orderly development of a system of vocational education that is adaptable to changing needs, controlled to prevent unnecessary duplication, co-ordinated with federal guidelines and requirements for vocational education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of vocational education, the board policies shall include:

(a) a state plan for such development;

(b) standards for vocational education courses and programs;

(c) instructor qualifications for vocational education courses and programs;

(d) criteria for approval of vocational education courses and programs which are to receive financial assistance;

(e) a basis for apportionment of all moneys appropriated by the legislature for vocational education in accordance with the intent of the legislature as reflected in the terms of the appropriation;

(f) a basis for apportionment of all moneys received by the state of Montana for vocational education from the federal government in accordance with the Acts of Congress;

(g) a system of evaluation of vocational education which allows for consideration of the current and projected manpower needs and job opportunities; and

(h) any other policy not inconsistent with public law and which is necessary for the proper operation of a system of vocational education.

(2) The governor shall appoint an administrative committee to be made up of three (3) of the appointed members from the board of public education and two (2) of the appointed members from the board of regents. The chairman of the administrative committee shall be a member and shall be selected by the board of public education.

(3) The administrative committee shall have delegated responsibility for the administration of the policies adopted by the state board of vocational education for the state of Montana and shall employ the executive officer for vocational education. The executive officer shall be an ex officio nonvoting member of the administrative committee."

Section 2. Section 75-7703, R.C.M. 1947, is amended to read as follows:

"**75-7703. Duties of executive officer for vocational education.** The *executive officer for vocational education shall administer for the administrative committee* all state and federal laws related to vocational education. *In addition* the executive officer shall *at the discretion of the administrative committee*:

(1) *be the chief administrative officer for the administrative committee for the administration of the* vocational education policies*;*

(2) prepare curriculum guides for *administrative committee* adoption;

(3) employ, with the confirmation of the *administrative committee*, the staff necessary for the state supervision and administration of vocational education*, including the postsecondary vocational-technical center directors in consultation with the local board of the district in which a center is located*;

(4) report the status of vocational education in the state of Montana *annually and in a form* requested by the *administrative committee*;

(5) keep all vocational education records in his office; and

(6) provide vocational education supervisory and consultative assistance to *schools;*

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(7) develop a manual of operations for the vocational-technical centers that specifies standard procedures for administration of the centers in accordance with the policy of the state board of vocational education."

Section 3. Section 75-5617, R.C.M. 1947, is amended to read as follows:

"75-5617. Division of powers among boards. (1) The powers and duties assigned to the "board of education," "state board of education" or "state board for vocational education" in Title 75, and wherever else appearing in the Revised Codes of Montana, 1947, except in chapters 81 and 84 through 88 of Title 75, *sections 75-7701, 75-7704, 75-7706 through 75-7710, 75-7714, and 75-7715,* subsections (14) and (15) of 75-5607, sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and except as provided in subsection *(4)* below, are hereby assigned to the board of public education created in article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) The powers and duties assigned in Title 75, sections 75-7701, 75-7704, 75-7706 through 75-7710, 75-7714, and 75-7715 are assigned to the state board of vocational education as defined in section 75-7702.

(3) The powers and duties assigned in chapters 81 and 84 through 88 of Title 75, R.C.M. 1947, and subsections (14) and (15) of 75-5607 R.C.M. 1947, as well as powers and duties assigned to the "state board of education ex officio regents," "state board of education of the state of Montana, ex officio regents of the Montana university system," "regents," "regents of the greater university system," "state board of regents" or "regents of the Montana system" wherever appearing in the Revised Codes of Montana, including those assigned to the "state board of education" and the "board of education" in sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and excepting as provided in subsection (3) below, are hereby assigned to the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(4) The powers and duties assigned in chapters 1 and 5 of Title 82A, R.C.M. 1947, to the "state board of education" or the "board of education" are hereby assigned to the state board of education composed of the board of public education and the board of regents of higher education as specified in article X, section 9, subsection (1) of the 1972 Montana constitution."

Section 4. Section 75-7701, R.C.M. 1947, is amended to read as follows:

"75-7701. Definitions. As used in this *chapter*, unless the context clearly indicates otherwise:

"Vocational education" means the instruction *and training* to prepare or improve the *student* for gainful employment that does not require a baccalaureate or higher degree. This definition of vocational education shall include guidance and prevocational, related or technical instruction necessary to prepare the *student* for further vocational education or for entry into employment.

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"*Postsecondary* vocational-technical education" means *instruction and training that* is conducted by a *postsecondary* vocational-technical center or *through contracted services with the administrative committee. Postsecondary* vocational-technical education shall include the 13th and 14th year and beyond but will not include work toward a baccalaureate degree.

"*Postsecondary* vocational-technical *student*" means a person who has completed or left school, is at least sixteen (16) years of age, and is available for study in preparation for entering the labor market, for re-entering the labor market, or for employment stability or advancement in employment.

"*Postsecondary* vocational-technical center" means a *state* school used principally for the provision of *postsecondary* vocational-technical education to persons who qualify as *postsecondary* vocational-technical *students.* These centers are designated by the *state* board of *vocational* education upon direction by the legislature. All other public or private schools are hereby prohibited from using this title."

Section 5. Section 75-7704, R.C.M. 1947, is amended to read as follows:

"**75-7704. District authorization to establish and maintain vocational education courses and programs.** The trustees of any district, community college district, or unit of the Montana university system may establish and maintain a vocational education course or program that complies with the vocational education *policies* adopted by the *state* board of *vocational* education. In order for a course or program to be eligible for state or federal financing, it shall be approved by the *administrative committee.*"

Section 6. Section 75-7706, R.C.M. 1947, is amended to read as follows:

"**75-7706. State treasurer custodian of vocational education moneys.** The treasurer of the state of Montana is hereby designated as the custodian of all federal and state moneys designated, appropriated or apportioned for vocational education. All moneys received from any federal or state source for the establishment, operation or furtherance of vocational education in the state shall be deposited with the state treasurer. At the direction of the *administrative committee,* he shall disburse all moneys appropriated or received for vocational education."

Section 7. Section 75-7303, R.C.M. 1947, is amended to read as follows:

"**75-7303. Acceptance and expenditure of federal moneys for state.** The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be

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deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government. All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time, but shall be continuously available to the superintendent of public instruction for expenditures consistent with this act and acts of the federal government.

The governor and the executive officer for vocational education are authorized on behalf of the state of Montana to request and accept moneys for vocational education as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of building construction for vocational education or for any other purpose for vocational education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

Such moneys shall be deposited by the governor and the executive officer for vocational education in the state treasury, and are appropriated and made available to the executive officer for vocational education.

All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the executive officer for vocational education as provided by the policies of the state board of vocational education."

Section 8. Section 75-7707, R.C.M. 1947, is amended to read as follows:

"75-7707. Postsecondary vocational-technical center designation. *Postsecondary* vocational-technical centers shall be designated by the *state* board of *vocational* education only upon direction of the legislature. Applications for designation must be made in accordance with the following procedure:

(1) The trustees of any high school district, of a county high school, of a community college district, or the governing board of any unit of the Montana university system may submit an application for designation of a *postsecondary* vocational-technical center to be operated by such trustees or governing board. The application for designation shall be submitted in accordance with the time, data and form requirements prescribed by

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the *policy of the state* board of *vocational* education. Applicant high school districts, county high schools, or community college districts shall be located in a county with a taxable valuation of at least forty-five million dollars ($45,000,000).

(2) Applications are to be presented to the executive officer for vocational education. The *executive officer* shall review the application and present it to the *administrative committee for the state* board of *vocational* education along with his recommendations. The *administrative committee* shall then examine the application and recommendations of the *executive officer* and either adopt the recommendations or draft its own recommendations. The application, together with all recommendations shall be presented by the *state* board of *vocational* education to the next following *legislature.*

The *state* board of *vocational* education shall recognize the presently designated *postsecondary* vocational-technical centers operated by the respective board of trustees of school district number 1 of Silver Bow County, high school district number 1 of Lewis and Clark County, high school district "A" of Cascade County, Missoula County high school, and high school district number 2 of Yellowstone County."

Section 9. Section 75-7708, R.C.M. 1947, is amended to read as follows:

"75-7708. Program and budget categories for postsecondary vocational-technical education. The *state* board of *vocational* education shall, *through the administrative committee,* have the sole authority for the approval of the *postsecondary* vocational-technical education programs and their budgets. Such programs and budgets shall be placed into three categories defined as:

(1) Maintenance and operation. The maintenance and operation category shall include programs and costs for instruction; vocational guidance and counseling; job placement; travel of *students* and personnel while engaged in a program; acquisition, maintenance, and repair of equipment; and the rental of necessary emergency facilities for not more than one year.

(2) Construction. The construction category shall include the program and cost for construction of new buildings; acquisition, expansion, remodeling and alteration of existing buildings; site acquisition and improvements; architectural fees; and the purchase of initial equipment.

(3) Ancillary services. The ancillary services category shall include the program and cost for the services and activities necessary to assure quality in the *postsecondary* vocational-technical center's instruction, such as supervision and administration of the center, program evaluation, special demonstration and experimental programs, and development of instructional materials and curriculum.

The trustees of the designated district or other governing board where the *postsecondary* vocational-technical center is located shall submit program proposals and the related budgets on the basis of these categories and in accordance with the program and budget approval *policy* prescribed by the *state* board of *vocational* education."

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Section 10. Section 75-7709, R.C.M. 1947, is amended to read as follows:

"**75-7709. Sources of financing for postsecondary vocational-technical center budgets.** The total of the budgets approved by the *administrative committee in accordance with the policies of the state* board of *vocational* education together with the budget for the cost of state administration of the *postsecondary* vocational-technical centers shall constitute the total maximum approved, state-wide budget which shall be financed as follows:

(1) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing *postsecondary* vocational-technical education in Montana.

(2) The board of county commissioners of each county in which a designated *postsecondary* vocational-technical center is located *shall* levy a tax of not to exceed one (1) mill on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the *postsecondary* vocational-technical center located within the said county.

(3) Designated *postsecondary* vocational-technical centers shall be eligible to receive such funds from the federal government as the *state* board of *vocational* education *policy* may provide pursuant to applicable acts of Congress.

(4) The board of trustees of any designated high school district, or county high school district where a *postsecondary* vocational center is located may be required, as a condition for the construction in such district of a *postsecondary* vocational center, or any part thereof, to furnish up to fifty percent (50%) of the amount of funds required for any such construction. The percentage of construction funds to be furnished by such designated district shall be derived, in whole or in part, from any of the following sources:

(a) The sale of bonds issued by such district. Such bonds shall be issued in conformity with the requirements of chapter 71 of Title 75 in the case of high school and county high school district.

(b) Any other funds available to such district which may be legally and properly applied toward such construction.

(c) The reasonable value of land, buildings, fixtures or equipment furnished by such district, subject to *provisions of the policy* of the *state* board of *vocational* education.

(5) If the aggregate financing provided by sources of revenue in (1), (2) and (3) does not provide one hundred per cent (100%) financing of the maximum approved, state-wide budget, the remaining deficiency shall be financed from any state funds appropriated by the legislature for *postsecondary* vocational-technical education.

The *state* board of *vocational* education *policy* shall *specify* the *method of* distribution of the funds specified in subsections (1), (3), and (5) of this

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section on the basis of the budgets approved by the *administrative committee.* The funds earned by the mill levy specified in subsection (2) of this section shall be credited by the county treasurer to the *postsecondary* vocational-technical center fund.

The *administrative committee* shall determine the amount of financing available from these five sources of revenue and approve budgets *of each center* for maintenance and operation, construction and ancillary services. The aggregate amount of the budgets so approved by the *administrative committee* for *the postsecondary* vocational-technical centers shall not exceed the moneys determined to be available."

Section 11. Section 75-7710, R.C.M. 1947, is amended to read as follows:

"**75-7710. Local administration.** The trustees or governing board of a *postsecondary* vocational-technical center shall *operate the* center according to the requirements of the laws of the state of Montana, the policies of the *state* board of *vocational* education, and the regulations of the *executive officer of vocational education.* If, in construing such laws, there is a conflict between the laws providing for *postsecondary* vocational-technical centers and any other laws governing the operation of schools, the former shall have the controlling authority."

Section 12. Section 75-7712, R.C.M. 1947, is amended to read as follows:

"**75-7712. Admission of students with priority to Montana residents.** *A* person who qualifies as a *postsecondary* vocational-technical *student* as defined in this *chapter* shall be admitted to *any postsecondary* vocational-technical center except that *students* who qualify as residents of the state of Montana as hereafter defined shall be given priority in case enrollment limitations are caused by resource limitation."

Section 13. Section 75-7714, R.C.M. 1947, is amended to read as follows:

"**75-7714. Students fees and disposition of collected fees.** Fees for the use of equipment and material used in instruction *and training* may be charged by the trustees or other governing board of the *postsecondary* vocational-technical center. *Policy of the state* board of *vocational* education shall prescribe the basis and limitations for the charging of such fees.

Fees collected by the *postsecondary* vocational-technical center shall be deposited with the county treasurer in the fund designated by the *executive officer for vocational education* for the receipt of such fees. The expenditure of the fees shall not be subject to budget limitations and shall be in addition to the program budgets approved by the *administrative committee.*"

Section 14. Section 75-7715, R.C.M. 1947, is amended to read as follows:

"**75-7715. Lease or purchase of state property for postsecondary vocational-technical center purposes.** The state of Montana, acting by

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and through the *state* board of *vocational* education, is hereby empowered and authorized to enter into a lease agreement for a term not to exceed forty (40) years, in order to lease to, *or from,* a district operating a *postsecondary* vocational-technical center any building or lands owned by the state *or district* and financed in whole or in part by an appropriation made for the purpose of supporting *a postsecondary* vocational-technical center. The consideration necessary to support such a lease may be nominal. *Right of renewal of the lease shall be guaranteed if the building is utilized for the purposes of postsecondary vocational education.*"

Section 15. Section 75-5607, R.C.M. 1947, is amended to read as follows:

"**75-5607. Powers and duties.** The board of *public* education shall have the power and it shall be its duty to:

(1) effect an orderly and uniform system of teacher certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by sections 75-6002 and 75-6011;

(2) consider the suspension or revocation of teacher certificates, and appeals from the denial of teacher certification in accordance with the provisions of section 75-6010;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of section 75-6917;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of section 75-7004;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of section 75-7403;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday, and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of sections 75-7404 and 75-7405;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of sections 75-7501 and 75-7502;

(8) establish the scope of conservation education in the schools in accordance with the provisions of section 75-7509;

(9) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of section 75-7511;

(10) adopt policies for the conduct of special education in accordance with the provisions of section 75-7802;

(11) supervise community college districts in accordance with the provisions of sections 75-8103 and 75-8119;

(12) call an election, determine the results of the election, order and implement the organization of a community college district in accordance with the community college districts chapter of this Title; and

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(13) perform any other duty prescribed from time to time by this Title or any other act of the legislature."

Section 16. Section 75-5707, R.C.M. 1947, is amended to read as follows:

"**75-5707. Powers and duties.** The superintendent of public instruction shall have the general supervision of the public schools and districts of the state, and he shall have the power and shall perform the following duties or acts in implementing and enforcing the provisions of this Title:

(1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of section 75-5929;

(2) issue, renew or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of *public* education in accordance with the provisions of the teacher certification chapter of this Title;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of section 75-6318;

(4) pay the tuition for the residents of the Montana children's center at Twin Bridges high school in accordance with the provisions of section 75-6319;

(5) serve on the teachers' retirement board in accordance with the provisions of section 75-6203;

(6) prescribe absentee voting forms and rules in accordance with the provisions of section 75-6416;

(7) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of section 75-6528;

(8) approve or disapprove the opening or reopening of a school in accordance with the provisions of sections 75-6602, 75-6603, 75-6604, or 75-6605;

(9) approve or disapprove school isolation within the limitations prescribed by section 75-6608;

(10) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of section 75-6702, and prescribe the school budget format in accordance with the provisions of section 75-6704 and 75-7209;

(11) establish a system of communication for calculating joint district revenues in accordance with the provisions of section 75-6721;

(12) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in section 75-6725, and publish rules and regulations for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of section 75-6729;

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(13) generally supervise the school financial administration provisions as prescribed by section 75-6802;

(14) appoint the responsible county officials for the performance of the budgeting duties and the financial administration duties for a joint district in accordance with the provisions of sections 75-6720 and 75-6803;

(15) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of subsection (5) of section 75-6806, and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of section 75-5809;

(16) approve, disapprove or adjust an increase of the average number belonging (ANB) in accordance with the provisions of sections 75-6903 and 75-6904;

(17) distribute state equalization aid in support of the foundation program in accordance with the provisions of sections 75-6908, 75-6918, and 75-6919;

(18) estimate the state-wide equalization level for the foundation program in accordance with the provisions of section 75-6920;

(19) distribute state impact aid in accordance with the provisions of section 75-6925;

(20) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of section 75-7005;

(21) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of section 75-7207;

(22) request, accept, deposit and expend federal moneys — *except federal funds for vocational education as described in sections 75-7705 and 75-7706* — in accordance with the provisions of section 75-7303;

(23) authorize the use of federal moneys for the support of an interlocal co-operative agreement in accordance with the provisions of sections 75-7306 and 75-7307;

(24) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of section 75-7308;

(25) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of sections 75-7404 and 75-7405;

(26) recommend standards of accreditation for all schools to the board of education, and evaluate compliance with such standards and recommend accreditation status of every school to the board of education in accordance with the provisions of sections 75-7501 and 75-7502;

(27) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of sections 75-7505 and 75-7506;

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(28) recommend the scope of conservation education in the schools to the board of education in accordance with the provisions of section 75-7509;

(29) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of section 75-7511;

(30) license textbook dealers, maintain a textbook library, initiate prosecution of textbook dealers violating the law, and supply a textbook listing in accordance with the provisions of the textbooks chapter of this Title;

(31) supervise and co-ordinate the conduct of special education in the state in accordance with the provisions of section 75-7803;

(32) administer the traffic education program in accordance with the provisions of section 75-7904;

(33) administer the school food services program in accordance with the provisions of sections 75-8002, 75-8003, and 75-8004;

(34) determine the result of an organization election for a community college district and the related election of trustees in accordance with the provisions of section 75-8112;

(35) review school building plans and specifications in accordance with the provisions of section 75-8206;

(36) publish and distribute fire danger books in accordance with the provisions of section 75-8309;

(37) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of section 75-8310; and

(38) perform any other duty prescribed from time to time by this Title, any other act of the legislature, or the policies of the board of *public* education."

Section 17. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 14, 1975.

CHAPTER NO. 435

AN ACT TO PROVIDE AN INCENTIVE FOR DEVELOPMENT OF NEW INDUSTRY IN MONTANA BY THE ALLOWANCE OF A STATE LICENSE TAX CREDIT FOR NEW AND EXPANDING CORPORATIONS.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 84-1519 that reads as follows:

84-1519. Short title. This act may be cited as "The Montana Corporate License Tax Credit Act of 1975".

Section 2. There is a new R.C.M. section numbered 84-1520 that reads as follows:

84-1520. Definitions. As used in this act:

(a) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972, by the office of management and budget of the United States.

(b) "New corporation" means a corporation engaging in manufacturing for the first time in this state and manufacturing a product not currently manufactured or substantially similar to a product currently manufactured by that corporation or any affiliate corporation in this state; it does not include reorganizing an existing corporation in this state or the creation of a parent, subsidiary or affiliate of which fifty percent (50%) or more is owned or controlled by the same person, corporation or association.

(c) "Expanding" means to expand or diversify a present operation to increase total full time jobs by thirty percent (30%) or more.

(d) "Department" means the state department of revenue.

Section 3. There is a new R.C.M. section numbered 84-1523 that reads as follows:

84-1523. Tax credit — determination — limitation. (1) A new or expanding manufacturing corporation may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of three (3) years as follows:

(a) the first three (3) years of operation of a new corporation or the first three (3) years of expansion of an expanding corporation a credit of one percent (1%) of the total new wages paid in this state as wages are defined in section 87-149 may be allowed.

(2) In determining total wages for an expanding corporation only those wages paid in support of the expansion are considered in ascertaining the credit; the payroll and number of jobs of the corporation in the twelve (12) month period immediately preceding the expansion are averaged to determine eligibility for the credit.

Section 4. There is a new R.C.M. section numbered 84-1524 that reads as follows:

84-1524. Department duties. The department shall determine the eligibility of a corporation for this credit, promulgate rules, prepare forms, maintain records and perform other duties necessary to carry out this act.

Section 5. There is a new R.C.M. section numbered 84-1525 that reads as follows:

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84-1525. Exclusion. This credit is available only to those new and expanding corporations that provide jobs within the state of Montana.

Approved April 14, 1975.

CHAPTER NO. 436

AN ACT ELIMINATING THE REQUIREMENT THAT CERTAIN LAND AND IMPROVEMENTS BE SEPARATELY ASSESSED AND AMENDING SECTIONS 84-401, 84-429 AND 84-501, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-401, R.C.M. 1947, is amended to read as follows:

"**84-401. Property assessed at cash value — exception for agricultural lands.** All taxable property must be assessed at its full cash value except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes. All lands shall be valued as agricultural lands for tax purposes that meet the qualifications of section 84-437.2, R.C.M. 1947. Land and improvements thereon *shall* be separately assessed *when any of the following conditions occur:*

(a) when ownership of the improvements is different from ownership of the land,

(b) when requested in writing by the taxpayer, or

(c) when the land is outside an incorporated city or town."

Section 2. Section 84-429, R.C.M. 1947, is amended to read as follows:

"**84-429. Land — how assessed.** All other taxable property must be assessed in the county, city, or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The department of revenue or its agent must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. It must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, *and the value of the lot and any improvements thereon in another column, except that a lot and improvements thereon shall be separately assessed when required under section 84-401, R.C.M. 1947*; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to

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the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the *total* value of the same and *any* improvements thereon."

Section 3. Section 84-501, R.C.M. 1947, is amended to read as follows:

"84-501. Property — how listed. The state department of revenue must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.

2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and *the value of same with* improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of city and town lots *with improvements thereon, except that a lot and improvements thereon shall be separately listed when required under section 84-401, R.C.M. 1947.*

7. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

8. The cash value of all personal property, exclusive of money.

9. The amount of money.

10. Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation must, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, must be assessed against the exempt land, nor under any circumstances must the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

11. The school, road, and other revenue districts in which each piece of property assessed is situated.

12. The total value of all property.

13. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax."

Approved April 14, 1975.

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CHAPTER NO. 437

AN ACT PROVIDING FOR PAYMENT OF THE STATE CONTRIBUTION TO GROUP INSURANCE PREMIUMS FOR LEGISLATORS AND CERTAIN SEASONAL EMPLOYEES WHEN SUCH PERSONS ARE NOT ON A REGULAR PAYROLL; AMENDING SECTION 11-1024, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1024, R.C.M. 1947, is amended to read as follows:

"**11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees — authority — approval of employees — limit on contributions.** *(1)* All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds (⅔) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies shall pay for such insurance ten dollars ($10) per month for each officer, employee, *and legislator,* and provided *that* for *all* employees *as defined in subsection (2) of this section and for members of the legislature,* such payment for insurance may be an amount equal to twelve (12) times the monthly rate, but may not exceed one hundred twenty dollars ($120) per year. Provided, however, that for employees of elementary and high school districts premium contributions are not subject to the ten dollar ($10) limitation of this section.

(2) In this section, as it applies to a person employed in the executive or legislative branches of state government, "employee" means:

(a) a permanent full-time employee as defined in section 59-1007.1;

(b) a part-time employee as defined in section 59-1007.1 who is scheduled to work at least twenty (20) hours per week;

(c) a person employed in a seasonal position as defined in section 59-1007.1 who is employed on a regular basis at least eight (8) months of the fiscal year."

Section 2. This act is effective upon passage and approval.

Approved April 14, 1975.

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CHAPTER NO. 438

AN ACT AMENDING SECTION 11-1832, R.C.M. 1947, TO PROVIDE THAT POLICE IN FIRST AND SECOND CLASS CITIES RECEIVE A MINIMUM WAGE OF SEVEN HUNDRED DOLLARS ($700) PER MONTH AFTER JULY 1, 1975 AND SEVEN HUNDRED FIFTY DOLLARS ($750) PER MONTH AFTER JULY 1, 1976.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Temporary minimum wage of police.** Between July 1, 1975, and June 30, 1976, each duly confirmed member of a police department of cities of the first and second class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work of at least seven hundred dollars ($700) minimum per month for the first year of service, and thereafter, of at least seven hundred dollars ($700) per month plus one percent (1%) of said minimum base monthly salary for each additional year of services. After July 1, 1976, the minimum wage of a member of a police department shall be as provided in section 11-1832.

Section 2. Section 11-1832, R.C.M. 1947, is amended to read as follows:

"**11-1832. Minimum wage of police in first and second class cities.** *Each* duly confirmed member of a police department of cities of the first *and second* class of the state of Montana is entitled to a minimum wage for a daily service of eight (8) hours' work, of at least *seven hundred fifty dollars ($750)* minimum per month for the first year of service, and thereafter of at least *seven hundred fifty dollars ($750)* minimum a month plus one per cent (1%) of the minimum base monthly salary of *seven hundred fifty dollars ($750)* for each additional year service up to and including the twentieth year of additional service."

Section 3. **Funding.** In compliance with section 43-517, the administration of this act is declared a public purpose of a city or town which may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the city or town.

Approved April 14, 1975.

CHAPTER NO. 439

AN ACT TO REVISE, LIMIT, AND STANDARDIZE THE TRAVEL EXPENSE REIMBURSEMENT PROVISIONS FOR ALL STATE OFFICERS AND EMPLOYEES; AMENDING SECTIONS 1-908, 3-2906, 16-412, 16-2723, 25-226, 25-236, 25-401, 25-404, 26-106, 26-114, 27-240, 31-104, 41-1201, 41-2107, 43-111, 43-218, 43-310, 43-714, 43-1106, 44-127, 59-538, 59-539, 59-801, 66-109, 66-408, 66-513, 66-608, 66-809, 66-909, 66-1020, 66-1226, 66-1311, 66-1410, 66-1505, 66-1815, 66-1927, 66-2104, 66-2203, 66-2403, 66-2329, 66-2604, 66-2703, 66-2910,

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66-3020, 66-3107, 69-5903, 70-134, 71-217, 72-107, 75-5614, 75-6204, 76-107, 76-111, 78-1304, 82-3603, 82A-110, 82A-112, 82A-1602.10, 89-3204, 93-232, 93-305, 93-313, AND 93-2014, R.C.M. 1947, AND REPEALING SECTION 59-802, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-538, R.C.M. 1947, is amended to read as follows:

"**59-538. Travel expense of persons in state service.** *Every elected official, appointed members of boards, commissions, councils, and department directors, and all other state employees shall be reimbursed for the cost of meals and lodging while away from the person's designated headquarters; traveling outside the employee's designated travel day and for more than three (3) hours; and engaged in official state business in accordance with the following provisions:*

(1) Travel within the state of Montana:

(a) The governor shall be authorized actual and necessary expenses not to exceed sixty dollars ($60) per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding sixteen dollars ($16) per day plus two dollars ($2) for the morning meal, three dollars ($3) for the midday meal, and five dollars ($5) for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Travel out of the state of Montana:

(a) The governor shall be authorized actual and necessary travel expenses not to exceed seventy dollars ($70) per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding thirty-seven dollars ($37) per day plus three dollars ($3) for the morning meal, four dollars ($4) for the midday meal, and six dollars ($6) for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) When other than commercial, non-receiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of seven dollars ($7) will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(d) or (2)(d) above.

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of section 43-310.

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(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least expensive class service available."

Section 2. Section 59-539, R.C.M. 1947, is amended to read as follows:

"59-539. Computation of travel allowance. *(1) To be eligible for the travel allowance provided in section 59-538, an employee must have been in a travel status for more than three (3) continuous hours and the travel must have commenced more than one (1) hour before or terminated more than one (1) hour after the employee's normally assigned work shift. If eligible, an employee:*

(a) earns the morning meal allowance if in a travel status between the hours of 12:01 a.m. and 10 a.m.;

(b) earns the midday meal allowance if in a travel status between the hours of 10:01 a.m. and 3 p.m.; and

(c) earns the evening meal allowance if in a travel status between the hours of 3:01 p.m. and 12 midnight.

(2) For persons in state service regularly assigned to an 8 a.m. to 5 p.m. work period, the only per diem allowance *may* be an amount not to exceed *three* dollars *($3)* per day for *a* midday *meal* when the departure is at or after 7 a.m. and the return on the same day is at or prior to 6 p.m. For persons in state service regularly assigned to work periods other than 8 a.m. to 5 p.m., the employing department may establish a per diem allowance of an amount not to exceed *two dollars ($2)* for *a* morning *meal* and *five dollars($5)* for *an* evening *meal. Only one of the three (3) allowances provided in subsection (2) may be claimed in any one (1) day.* In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours.

(3) The department of administration shall prescribe rules necessary to effectively administer this section for state government."

Section 3. Section 59-801, R.C.M. 1947, is amended to read as follows:

"59-801. Mileage of all officers. (1) Members of the *legislature*, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage for the distance actually traveled by automobile, and for the shortest regularly traveled automobile route when travel is by private plane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

(2) Where the individual is authorized to operate a privately owned vehicle even though a *government* owned *or leased* vehicle is available, a rate of *three* cents *(3¢) less* per mile *than the mileage rate allowed by the United States internal revenue service for the next preceding year shall be paid.*

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(3) Where a privately owned vehicle is used because a *government* owned or leased vehicle is not available for use or it is in the best interest of the *governmental entity* that a privately owned vehicle be used, *a rate equal to the mileage allotment allowed by the United States internal revenue service for the next preceding year* shall be paid *for the first one thousand (1,000) miles and three cents (3¢)* per mile *less for all miles thereafter traveled within a given calendar month.*

(4) The department of administration shall prescribe rules necessary to effectively administer this section for state government."

Section 4. Section 1-908, R.C.M. 1947, is amended to read as follows:

"1-908. Commissioners — compensation — meetings — officers. A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may delegate to one (1) or more of its agents or employees such powers or duties as it may deem proper."

Section 5. Section 3-2906, R.C.M. 1947, is amended to read as follows:

"3-2906. Compensation — per diem. Members of the committee shall receive no salary, but shall be paid, from the wheat research and marketing account in the federal and private revenue fund, a per diem of twenty dollars ($20) for each day they are engaged in the transaction of official business, together with their actual and necessary *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred while on official business."

Section 6. Section 16-912, R.C.M. 1947, is amended to read as follows:

"16-912. Compensation of members of board. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R.C.M. 1947, for the clerk and recorder.

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In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive *a mileage allowance as provided in section 59-801* for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to a salary to be established by the board of county commissioners by resolution in an amount not to exceed thirty-five dollars ($35) per day for each day's attendance on the sessions of the board and *a mileage allowance as provided in section 59-801* for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars ($10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed."

Section 7. Section 16-2723, R.C.M. 1947, is amended to read as follows:

"**16-2723. Mileage and expense of sheriff.** Sheriffs delivering prisoners at the state prison or mentally ill persons at the state hospital, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the department of administration or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive *a mileage allowance as provided in section 59-801. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging and meals of person(s) ordered by the court as provided in section 59-538, 59-539 and 59-801.* The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 8. Section 25-226, R.C.M. 1947, is amended to read as follows:

"**25-226. Fees of sheriff.** (1) For the service of summons and complaint on each defendant, one dollar *($1)*;

For levying and serving each writ of attachment of execution on real or personal property, one dollar *($1)*;

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For service of attachment on the body or order of arrest on each defendant, one dollar *($1)*;

For the service of affidavit, order, and undertaking in claim and delivery, one dollar *($1)*;

For serving a subpoena, twenty-five cents (25¢) for each witness summoned;

For serving writ of possession or restitution, two dollars *($2)*;

For trial of the right of property or damages, including all services except mileage, three dollars *($3)*;

For taking bond or undertaking in any case authorized by law, one dollar *($1)*;

For serving every notice, rule or order, one dollar *($1)*, for each person served;

For copy of any writ, process or other paper when demanded or required by law, twenty cents (20¢) for each folio;

For advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, one dollar *($1)*;

(2) For the expense in taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court or judge may order, not to exceed the actual expense incurred, and no keeper must receive to exceed five dollars *($5)* per day and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss.

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad, he shall receive *a mileage allowance as provided in section 59-801* for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one *(1)* mileage shall be charged.

(4) Provided further, that this act shall not apply to the delivery of prisoners at the state prison or at the reform school, or insane persons to the state insane asylum, for which he shall receive the actual expense incurred as provided by section 16-2723 of this code. Nor shall this act

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apply to trips made for the return of fugitives apprehended and arrested outside the county for which the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. But no mileage must be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons. When two *(2)* or more papers are served on the same person at the same time, or when any paper or papers are served on more than one *(1)* person on the same trip, but one *(1)* mileage must be allowed or charged, and in the service of subpoenas, but one *(1)* mileage must be charged when the persons named therein live in the same place or in the same direction, but mileage must be charged for the longest distance actually traveled. Any writ, order or other paper for service, must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed from such place, but if papers are delivered for service away from the county seat, all necessary copies thereof must be furnished for service. When two *(2)* or more officers travel in the same automobile in the discharge of any duty but one *(1)* mileage shall be allowed."

Section 9. Section 25-236, R.C.M. 1947, is amended to read as follows:

"**25-236. Fees of coroner.** The coroner is entitled to receive and collect for his own use the following fees:

For each day or fraction of day engaged in making an investigation relative to a death, whether an inquest is later held or not, the sum of five dollars *($5)*, provided that not more than one day's fees shall be charged for making an investigation in any one case, except in counties of the first, second and third class;

For each day or fraction of day engaged in holding an inquest, five dollars *($5)*, provided that not more than two days' fees shall be charged for holding an inquest in any one case;

For subpoenaing each witness, including copy of subpoena, thirty cents (30¢);

For summoning each juror, including copy of summons, thirty cents (30¢);

For each oath administered, five cents (5¢);

For making transcript of testimony, per folio, fifteen cents (15¢);

For each mile actually traveled in the performance of any duty, *a mileage allowance as provided in section 59-801*;

For filing papers, each five cents (5¢);

The total amount of fees allowed by the board of county commissioners to a coroner, except when acting as sheriff, must not exceed twenty-one hundred dollars *($2100)* in any one year, including compensation paid all

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clerks, stenographers and other clerical assistants employed by him, provided the coroner in a county having a population of forty-five thousand (45,000) or more, according to the latest federal census enumeration, may, at the discretion of the county commissioners receive a salary of not to exceed three thousand seven hundred fifty dollars *($3,750)* per year and mileage as above provided in lieu of all fees above-mentioned, and all clerical and stenographic help except as provided in section 16-3408, shall be included in such salary. Said population to be based on the latest United States census.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services."

Section 10. Section 25-401, R.C.M. 1947, is amended to read as follows:

"**25-401. Jurors' fees.** Grand and trial jurors shall receive twelve dollars ($12) per day for attendance before any court of record and *a mileage allowance as provided in section 59-801* each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage."

Section 11. Section 25-404, R.C.M. 1947, is amended to read as follows:

"**25-404. Witnesses' fees.** For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, ten dollars ($10). For mileage in traveling to the place of trial or hearing, each way, for each mile, *a mileage allowance as provided in section 59-801*; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceedings, and that no witness shall receive fees in any more than one criminal case on the same day."

Section 12. Section 26-106, R.C.M. 1947, is amended to read as follows:

"**26-106. Director of fish and game — powers — duties.** The director of fish and game shall be the secretary of the commission, attend the meetings of the commission, and keep a record of all of its transactions. The director shall keep an inventory showing the description and value of all property owned by the state and under the administration of the commission. He shall be the administrative agent of the commission and custodian of the property and records of the department. He shall devote all of his time to his official duties and his powers and duties include those of a warden. He is subject to the supervision and control of the commission. The director may, by and with the consent of the commission,

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establish such department divisions and employ the necessary personnel that may be needed to conduct the work of the department. The director shall be paid a salary fixed by the commission and shall be reimbursed for *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred while in the performance of his duties, the same to be paid upon proper vouchers from the fish and game account in the earmarked revenue fund."

Section 13. Section 26-114, R.C.M. 1947, is amended to read as follows:

"**26-114. Appointment of ex officio state fish and game wardens.** All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, and such other officers of the United States forest service or agents of the United States fish and wildlife service which are assigned to duty in this state, and field personnel fish and game commission, as the director, with the approval of the state fish and game commission, may appoint are hereby made ex officio state fish and game wardens, without pay, except that the commission may, in its discretion, allow traveling expenses, *as provided for in sections 59-538, 59-539, and 59-801,* which, if allowed, shall be paid upon proper vouchers from the state fish and game funds, and shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed state fish and game wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of said laws."

Section 14. Section 27-240, R.C.M. 1947, is amended to read as follows:

"**27-240. Advisory council.** (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed twelve (12) members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed two (2) years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of twenty-five dollars ($25) per day for each day actually spent in the performance of his duties and shall be reimbursed for *travel* expenses as provided *for in sections 59-538, 59-539, and 59-801.*

(3) The council may request that the department of agriculture hold a public hearing as outlined in section 27-235, to assist it in gathering factual data and information on the special problems assigned it."

Section 15. Section 31-104, R.C.M. 1947, is amended to read as follows:

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"**31-104. Chief — appointment — tenure of office — salary — supervisory power — resident requirement.** The board shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose, and *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801.* The chief shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with the approval of the board and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;

2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;

3. Prescribe the official uniform of the Montana highway patrol;

4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;

6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;

7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol."

Section 16. Section 41-1201, R.C.M. 1947, is amended to read as follows:

"**41-1201. Apprenticeship council.** (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state

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official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) Subject to the approval of the federal committee on apprenticeship, the apprenticeship council shall: (1) establish standards for apprenticeship agreements in conformity with the provisions of this act; (2) issue such rules and regulations as may be necessary to carry out the intent and purposes of this act; and (3) perform such other duties as are hereinafter imposed. Not less than once every two years the apprenticeship council shall make a report through the governor of the state of Montana of its activities and findings to the legislature which shall be made available to the public.

(c) The council may accept from the federal government or any agency thereof or from any state agency, any funds made available to carry out purposes within the scope of the activities and purposes of the apprenticeship council and to use such funds as said council may direct, for the purposes for which said funds are made available.

(d) A *compensation* of fifteen dollars *($15)* plus *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* shall be paid each voting member of the state apprenticeship council, or their authorized representatives, while in official travel status and while attending official meetings for each whole or part of any calendar day. Such voting members, or their representatives, shall be reimbursed a mileage rate and the same is paid other state officials or state employees, for use of personally-owned vehicles to attend official meetings from any point in the state of Montana to the place of meeting in Montana and return. A maximum of three hundred dollars *($300)* shall be the limitation for the combined per diem, expenses and mileage payments as provided for herein, for each voting member of said council, or their representatives, during the twelve (12) consecutive month period of any fiscal year from July first of one year to June thirtieth of the next following year.

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote."

Section 17. Section 41-2107, R.C.M. 1947, is amended to read as follows:

"**41-2107. Reimbursement of commission members.** Members of said commission shall serve without compensation but shall be reimbursed for travel expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in the discharge of their duties, including attendance at meetings."

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Section 18. Section 43-111, R.C.M. 1947, is amended to read as follows:

"**43-111. Compensation of reapportionment commissioners.** Commissioners are entitled to compensation of twenty dollars ($20) per day plus travel expenses, *as provided for in sections 59-538, 59-539, and 59-801,* while attending commission meetings or in carrying out the official duties of the commission."

Section 19. Section 43-218, R.C.M. 1947, is amended to read as follows:

"**43-218. Pre-session caucus — house appropriation and senate finance and claims committee member — per diem and expenses.** As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the *legislature* are elected, the majority and minority parties of each house of the legislature shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees and hire any necessary employees. Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests. Members of these committees shall receive twenty dollars ($20) per day for each day engaged in committee business, and all members of these committees shall be reimbursed for *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in their duties. Per diem and expenses shall be paid by the department of administration from the appropriation for operation of the preceding *legislature.*"

Section 20. Section 43-310, R.C.M. 1947, is amended to read as follows:

"**43-310. Per diem, mileage and expenses of members.** (1) Legislators are entitled to compensation of twenty dollars ($20) per legislative day, payable weekly, during a session of the legislature, and *a mileage allowance as provided in section 59-801* for each mile of travel to and from their residences and the place of holding the session, by the shortest regularly traveled automobile route.

(2) Members are also entitled to thirty-three *dollars* ($33) per day, seven (7) days a week payable weekly during a legislative session, as reimbursement for expenses incurred in attending the session. Expense payments shall stop when the legislature recesses for more than three (3) days and shall resume when the legislature reconvenes.

(3) While going to, attending, and returning from legislative standing committee meetings and necessary committee business authorized by the chairman of the legislative council during the legislative interim, legislators are entitled to:

(a) a mileage allowance *as provided in section 59-801* for each mile of travel,

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(b) actual expenses, and

(c) compensation of twenty dollars ($20) per day.

(4) Legislators are also entitled to a mileage allowance *as provided in section 59-801* for travel to and from their respective pre-session caucus meeting."

Section 21. Section 43-714, R.C.M. 1947, is amended to read as follows:

"**43-714. Expenses.** When the legislature is not in session, members of the legislative council, the legislative subcommittees, select and standing committees, while going to, attending, and returning from legislative committee meetings and other necessary committee business authorized by the chairman of the legislative council are entitled to:

(1) a mileage allowance as allowed by *section 59-801,*

(2) actual expenses, *as provided for in sections 59-538 and 59-539,* and

(3) compensation as provided by law."

Section 22. Section 43-1106, R.C.M. 1947, is amended to read as follows:

"**43-1106. Reimbursement for expenses — per diem.** Members of the legislative fiscal review committee and its subcommittees shall be reimbursed for travel and other expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in the discharge of their duties, and may also receive *compensation* as authorized by law."

Section 23. Section 44-127, R.C.M. 1947, is amended to read as follows:

"**44-127. State library commission created.** A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801.*"

Section 24. Section 66-109, R.C.M. 1947, is amended to read as follows:

"**66-109. Compensation of members of board — disposition and use of funds — report.** (1) Each member of the board is allowed the sum of twenty-five dollars ($25) per day plus mileage in accordance with section 59-801 and *travel* expenses, *as provided for in sections 59-538, and 59-539,* while in the discharge of his actual duties.

(2) All fees and moneys received by the department for licenses from practicing architects shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

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Section 25. Section 66-408, R.C.M. 1947, is amended to read as follows:

"**66-408. Compensation.** Each member of the board shall receive a compensation of twenty-five dollars ($25) per day while attending board meetings plus *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in attending meetings of the board."

Section 26. Section 66-513, R.C.M. 1947, is amended to read as follows:

"**66-513. Disposition of fees — receipts and disbursements — reports — per diem and mileage.** (1) Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

(3) The members of the board shall receive twenty-five dollars ($25) for each day during which they are actually engaged in the discharge of their duties, plus mileage as provided in section 59-801, and reimbursement for *travel* expenses, *as provided for in sections 59-538, and 59-539.*"

Section 27. Section 66-608, R.C.M. 1947, is amended to read as follows:

"**66-608. Compensation of board — expenses.** Each member of the board, except the physician members, who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services the sum of five dollars ($5) per diem and *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801.* Other contingent expenses, necessarily incurred, shall be paid by the state department in the same manner as other expenses of the state board of medical examiners."

Section 28. Section 66-809, R.C.M. 1947, is amended to read as follows:

"**66-809. Compensation of members of board — deposit of receipts in state treasury.** Each member of the board shall receive, as compensation for his services, the sum of twenty-five dollars ($25) per day for each day in actual attendance at any meeting at the board. In addition, each member shall be reimbursed for *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* necessarily incurred in the performance of *official* duties. All fees collected by the department under this act, shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

Section 29. Section 66-909, R.C.M. 1947, is amended to read as follows:

"**66-909. Compensation and expenses allowed board members — limitation on duration of examination meetings — disbursement of funds.** (1) Out of the funds derived from fees and dues collected under this act each member of the board shall be reimbursed as follows:

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(a) Fifteen dollars ($15) per day for each day traveling to and from a meeting and while in actual attendance at a meeting of the board and for each day actually engaged in the duties of his office.

(b) Expenses and travel authorized under sections 59-538, *59-539,* and 59-801.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed six (6) days.

(3) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this act and for educational purposes considered wise by the board. The department, on the written request of the board, shall set aside in a separate account in the earmarked revenue fund, the emergency moneys provided under section 66-906. This account may be expended only when the board determines that an emergency exists requiring an expenditure therefrom."

Section 30. Section 66-1020, R.C.M. 1947, is amended to read as follows:

"**66-1020. Compensation of members.** Each member of the board of medical examiners shall receive twenty-five dollars ($25) per day compensation while traveling to and from board meetings, and while attending board meetings, and for each full day away from home while conducting board business plus *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* while in the active and necessary discharge of his duties."

Section 31. Section 66-1226, R.C.M. 1947, is amended to read as follows:

"**66-1226. Reimbursement for expenses — compensation.** Each member of the board shall be paid mileage as provided in section 59-801, and *travel* expenses *provided for in sections 59-538, and 59-539,* and in addition, fifteen dollars ($15) per day for each day actually engaged in the discharge of duties under this act, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings, and a reasonable number of days for the preparation and administration of examinations."

Section 32. Section 66-1311, R.C.M. 1947, is amended to read as follows:

"**66-1311. Compensation of board.** Each member of the board may receive as compensation the sum of twenty-five dollars ($25) and *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* for each day actually engaged in the duties of his office. Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

Section 33. Section 66-1410, R.C.M. 1947, is amended to read as follows:

"**66-1410. Compensation of board — deposit of fees.** (1) Each of

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the members of the board may receive as compensation a sum not to exceed twenty dollars ($20) for each day actually engaged in the duties of their office, together with *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801, connected with* attending the meetings of the board.

(2) The fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

Section 34. Section 66-1505, R.C.M. 1947, is amended to read as follows:

"**66-1505. Salaries and expenses of board members.** Each member of the board shall receive twenty-five dollars ($25) a day as compensation for the performance of his services as a board member and shall be compensated in addition thereto for *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* in attending meetings."

Section 35. Section 66-1815, R.C.M. 1947, is amended to read as follows:

"**66-1815. Powers and duties of department and board.** (1) The board shall elect annually a chairman, secretary, and treasurer from its members. (2) The board may adopt rules for the conduct of its affairs and the administration of this act. (3) A quorum for the transaction of business consists of three (3) members of the board. (4) The board shall have a seal which shall be judicially noticed. (5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this act, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records. (6) Each member of the board shall receive as compensation twenty dollars ($20) for each day actually engaged in the duties of his office, and, in addition, shall be reimbursed for *travel* expenses, *provided for in sections 59-538, 59-539, and 59-801, connected with* the discharge of his official duties."

Section 36. Section 66-1927, R.C.M. 1947, is amended to read as follows:

"**66-1927. Board — powers and duties — compensation.** (1) The board shall from time to time adopt rules to carry out the provisions of this act.

(2) The department shall keep a record of proceedings, transactions, communications and official acts of the board, be custodian of the records of the board and shall cause to be performed other duties as the board on the written request of two (2) or more members of the board or at other times as the chairman in his discretion considers necessary. Neither the chairman nor an employee of the department, hired to provide services to the board, may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(3) Each member of the board shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents ($7.50) and *travel* expenses, *as pro-*

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vided for in sections 59-538, 59-539, and 59-801, connected with the performance of other duties provided for by the board.

(4) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes."

Section 37. Section 66-2104, R.C.M. 1947, is amended to read as follows:

"66-2104. Compensation of members of board — disposition of funds. (1) Each member of the board shall receive a compensation of five dollars ($5) per day for actual services while attending meetings or otherwise engaged in business connected with the board, and shall receive *travel expense reimbursement as provided for in sections 59-538, 59-539, and 59-801.*

(2) Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

Section 38. Section 66-2203, R.C.M. 1947, is amended to read as follows:

"66-2203. Expenses and funds — records and reports. (1) Each member of the board is entitled to receive *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801.*

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records, and are at all times open to public inspection.

(3) Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6)."

Section 39. Section 66-2403, R.C.M. 1947, is amended to read as follows:

"66-2403. Compensation — examination of applicants. (1) A member of the board is entitled to compensation of twenty dollars ($20) for each day while actually engaged in the work of the board *and reimbursement for travel expenses as provided for in sections 59-538, 59-539, and 59-801.*

(2) An applicant for a license to work at the business of plumbing shall be examined as to his qualifications by the department, subject to section 82A-1603 (4). The department shall examine each applicant for a license, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination prescribed by the board, then a license shall be issued to the applicant authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be. The license, when issued, authorizes the holder to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in this state."

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Section 40. Section 66-2329, R.C.M. 1947, is amended to read as follows:

"**66-2329. Board — compensation and expenses.** Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed twenty-five dollars *($25)* per day. In addition thereto, each member shall be reimbursed for *travel expenses as provided for in sections 59-538, 59-539, and 59-801, involved* in carrying out the provisions of this act."

Section 41. Section 66-2604, R.C.M. 1947, is amended to read as follows:

"**66-2604. Board — seal — compensation.** (1) The board shall have a seal with the following words engraved thereon: "Board of Water Well Contractors." This seal shall be affixed to writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of the seal.

(2) *The board may employ such* persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. *Each* appointed member of the board who is not a state employee shall receive, as compensation for his services, twenty dollars ($20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and *travel* expenses as provided *for in sections 59-538, 59-539, and 59-801.* Employees of the state of Montana who are members of the board shall receive no extra compensation for their services as members of the board."

Section 42. Section 66-2703, R.C.M. 1947, is amended to read as follows:

"**66-2703. Officers of board — compensation of members.** The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members shall serve without compensation but shall be reimbursed for *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801, connected with* attending meetings or in the discharge of other board duties."

Section 43. Section 66-2910, R.C.M. 1947, is amended to read as follows:

"**66-2910. Disposition of fees — receipts and disbursements.** (1) Examination and renewal fees received by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

(2) The department shall keep an accurate account of funds received and vouchers issued.

(3) The members of the board shall receive a *compensation* of twenty-five dollars ($25) for each day during which they are actually engaged

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in the discharge of their duties, and *shall be allowed travel expenses, as provided for in sections 59-538, 59-539, and 59-801.*

(4) *Compensation,* mileage, and other expenses necessarily connected with the board shall be paid only out of the earmarked revenue fund."

Section 44. Section 66-3020, R.C.M. 1947, is amended to read as follows:

"**66-3020. Deposit of fees in earmarked revenue fund — per diem and travel expenses.** (1) Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

(2) Each member of the board shall receive twenty dollars ($20) *compensation* when actually engaged in the discharge of his official duty, and in addition shall also be reimbursed for travel expense, *as provided for in sections 59-538, 59-539, and 59-801,* in attending a meeting of the board in the state."

Section 45. Section 66-3107, R.C.M. 1947, is amended to read as follows:

"**66-3107. Organization and compensation of board.** The board shall elect from its membership a chairman, vice-chairman and secretary-treasurer, and shall adopt rules and regulations to govern its proceedings. As compensation for his services, each member shall receive twenty-five dollars ($25) a day, in addition to expenses, for each day of actual service in the performance of his duties. All members shall be allowed travel *expenses as provided for in sections 59-538, 595-539, and 59-801,* and living expenses, as may be approved by the board."

Section 46. Section 69-5903, R.C.M. 1947, is amended to read as follows:

"**69-5903. Board to assist department — meetings and organization — examination of candidates for certification.** (1) The board shall advise and assist the department in the administration of the certification program. The board shall serve as an advisory board to the department in actions relating to the qualifications of water and waste water treatment plant operators.

(2) Annually when new members are appointed to the board a chairman shall be elected at the next board meeting.

(3) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification. Additional meetings may be called by the chairman, or on written request of four (4) members of the board when necessary to carry out this chapter. Four (4) members constitute a quorum. The members of the board shall receive a fee of twenty dollars ($20) per day while in session, plus *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* including travel while discharging their official duties."

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Section 47. Section 70-134, R.C.M. 1947, is amended to read as follows:

"**70-134. Traveling expenses of commission.** The commission and secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their expenses while traveling on the business of the commission, *as provided for in sections 59-538, 59-539, and 59-801.* Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission."

Section 48. Section 71-217, R.C.M. 1947, is amended to read as follows:

"**71-217. Staff personnel — how selected, paid and controlled — dismissal.** Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause.

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department, from county poor funds, one-half of the payments so made to its public assistance staff personnel, except that, under circumstances prescribed by the state department, the reimbursement by the county board of public welfare may be less than one-half. All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs."

Section 49. Section 72-107, R.C.M. 1947, is amended to read as follows:

"**72-107. Expenses of commissioners and employees.** Commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to have their *travel*

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expenses *reimbursed as provided for in sections 59-538, 595-539, and 59-801.*"

Section 50. Section 75-5614, R.C.M. 1947, is amended to read as follows:

"**75-5614. Per diem of board members — expenses.** Appointed members of the board of public education and the board of regents are entitled to twenty-five dollars ($25) per day and *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* for each day in attendance at board meetings or in the performance of any duty or service as a board member."

Section 51. Section 75-6204, R.C.M. 1947, is amended to read as follows:

"**75-6204. Per diem and expenses.** The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive twenty-five dollars ($25) per day and *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system."

Section 52. Section 76-107, R.C.M. 1947, is amended to read as follows:

"**76-107. Appointment, qualifications and tenure of supervisors.** (1) The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five (5) or seven (7) supervisors, elected or appointed as provided herein.

(2) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

(3) Where there are more than two (2) incorporated municipalities within a district, then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein.

(4) The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be

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elected to serve the unexpired term. A majority of the supervisors constitute a quorum and the concurrence of a majority in any matter within their duties is required for its determination. A supervisor may not receive compensation for his services, but he is entitled to expenses, including *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in the discharge of his duties.

(5) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents or employees, such powers and duties as they consider proper. The supervisors shall furnish to the department copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they adopt or employ, and such other information concerning their activities as may be required in the performance of their duties under this act.

(6) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. A supervisor may be removed by the board upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

(7) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county."

Section 53. Section 76-111, R.C.M. 1947, is amended to read as follows:

"**76-111. Board of adjustment.** (1) Where the supervisors of a district adopt an ordinance prescribing land-use regulations in accordance with section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. The board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each board of adjustment shall be appointed by the department, with the advice and approval of the supervisors of the district for which the board has been established, and may be removed by the department, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, the hearing to be conducted jointly by the department and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the board of natural resources and conservation, employees of the department, and the supervisors of the district are ineligible to appointment as members of the board

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of adjustment. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars ($4) per *day* for time spent on the work of the board, in addition to expenses, including *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

(2) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this act, and with any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

(3) Any qualified elector may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of the regulations to the lands occupied by the petitioner. Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given. The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at the hearing the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship. Upon the basis of the findings and determination, the board may order a variance from the terms of the land-use regulations, in their application to the lands of the petitioner, that will relieve the great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations are observed, the public health, safety, and welfare secured, and substantial justice done.

(4) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party, may obtain a review of the order in any district

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court of the county, in which the lands of the petitioner lie, by filing in the court a petition praying that the order of the board be modified or set aside. A copy of the petition shall immediately be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon the filing, the court shall cause notice thereof to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined therein, and may grant such temporary relief as it deems just and proper, and make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. A contention that is not urged before the board may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, are conclusive. If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file the modified or new findings, which, if supported by evidence, are conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court."

Section 54. Section 78-1304, R.C.M. 1947, is amended to read as follows:

"**78-1304. Per diem and mileage.** Legislative members are entitled to *reimbursement for travel expenses as provided for in sections 59-538, 59-539, and 59-801,* for days actually engaged in the work of the committee."

Section 55. Section 82-3603, R.C.M. 1947, is amended to read as follows:

"**82-3603. Terms of council members — chairman and vice-chairman — vacancies — expenses of members.** The term of office of each member shall be five (5) years; provided, however, that of the members first appointed, five (5) shall be appointed for terms of one (1) year, five (5) for terms of three (3) years, and five (5) for terms of five (5) years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for *travel* expenses, *as provided for in sections 59-538, 59-539, and*

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59-801, incurred in the performance of their duties as members of the council."

Section 56. Section 82A-110, R.C.M. 1947, is amended to read as follows:

"**82A-110. Creation of advisory councils.** (1) A department head or the governor may create advisory councils. An official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, or an agency, may also create advisory councils, but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(2) Each advisory council created under this section shall be known as the ".... advisory council."

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in section 82A-103 (7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for *travel* expenses *as provided for in sections 59-538, 59-539, and 59-801.*

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor, and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (10) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the cre-

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ation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) Name, in accordance with subsection (2) of this section.

(b) Composition.

(c) Names and addresses of the appointed members.

(d) Purpose.

(e) Term of existence, in accordance with subsection (11) of this section.

(10) The board of public education, the board of regents of higher education, the state board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(11) An advisory council may not be created to remain in existence longer than two (2) years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor, or by the board of public education, or by the board of regents of higher education, or by the state board of education, or by the attorney general, or by the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (10) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than two (2) years later, when the existence of the advisory council ends, and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Section 57. Section 82A-112, R.C.M. 1947, is amended to read as follows:

"**82A-112. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section:

(1) The number of and qualifications of its members are as prescribed by law; in addition to those qualifications, at least one (1) member shall be an attorney licensed to practice law in this state.

(2) (a) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term, and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term, and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term, and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

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(b) This subsection does not affect the terms of persons who were members of a continued board on the effective date of the chapter of this title continuing the board; upon the expiration of those terms, members shall be appointed and serve in accordance with this subsection.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office, and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for *travel* expenses *as provided for in sections 59-538, 59-539, and 59-801.*

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Section 58. Section 82A-1602.10, R.C.M. 1947, is amended to read as follows:

"**82A-1602.10. State electrical board.** (1) There is a state electrical board.

(2) The board consists of five (5) members, appointed by the governor, with the consent of the senate, who shall be residents of this state. One (1) member of the board shall represent the public. One (1) member of the board shall be selected from each of the following four (4) groups, from three (3) names submitted by each group:

(a) Consumer members of rural electric cooperatives;

(b) Master licensed electrical contractors;

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(c) Licensed journeyman electricians; and

(d) Investor-owned electric utilities.

(3) The members of the board shall serve for a term of five (5) years with their terms of office so arranged that one (1) term expires on July 1 of each year.

(4) Each member of the board shall receive twenty-five dollars ($25) per day for each day served in the discharge of his duties, together with *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in the performance of his duties.

(5) A majority of the members of the board shall constitute a quorum for transaction of business."

Section 59. Section 89-3204, R.C.M. 1947, is amended to read as follows:

"**89-3204. Compensation and reimbursement of Montana commissioners.** Each member of the commission from the state of Montana shall be entitled to receive as full compensation for his services the sum of twenty dollars *($20)* per day while actually engaged in the performance of his duties as commissioner and shall be entitled in addition thereto, to his *travel* expenses, *as provided for in sections 59-538, 59-539, and 59-801,* while so engaged."

Section 60. Section 93-232, R.C.M. 1947, is amended to read as follows:

"**93-232. Expenses of members of commission.** Members of said commission shall serve without compensation, but shall be reimbursed for travel expenses, *as provided for in sections 59-538, 59-539, and 59-801,* incurred in the discharge of their duties, including attendance at meetings."

Section 61. Section 93-305, R.C.M. 1947, is amended to read as follows:

"**93-305. Expenses when sitting out of district, or attending judges' conference.** Every judge who shall sit in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own, or in the supreme court, or who shall attend a conference of judges in Helena called by the chief justice of the supreme court, shall be paid his *travel* expenses while engaged in that service as follows: His *travel* expenses in going from the county seat which he makes his place of residence to the place of trial, or conference, and return, and his board and lodging while engaged in the trial, hearing, or conference. *All travel expense reimbursements shall be determined as provided for in sections 59-538, 59-539, and 59-801.*"

Section 62. Section 93-313, R.C.M. 1947, is amended to read as follows:

"**93-313. Expenses of judges holding court in other counties.** Each district judge of a judicial district in this state, composed of more than one county, when, for the purpose of holding court and disposing of judi-

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cial business, he goes to a county of his judicial district, other than the county in which he resides, and therein holds court or transacts judicial business, shall be paid all of his actual and necessary expenses of transportation and living, incurred on account thereof, and all expenditures made therefor, *as provided for in sections 59-538, 59-539, and 59-801,* from the time he leaves his place of residence until he returns thereto."

Section 63. Section 93-2014, R.C.M. 1947, is amended to read as follows:

"**93-2014. Compensation and expenses of members of board.** The members of said board shall be entitled to their *travel* expenses in attending meetings of said board and in conducting such examination, and also, when away from their homes or places of residence, *as provided for in sections 59-538, 59-539, and 59-801,* and shall be paid such compensation for services performed by them as members of said board, as may be fixed and determined by the supreme court."

Section 64. Section 59-802, R.C.M. 1947, is repealed.

Approved April 14, 1975.

CHAPTER NO. 440

AN ACT TO AMEND SECTIONS 84-1842 AND 84-1843, R.C.M. 1947, RELATING TO SPECIAL FUEL USER'S TEMPORARY TRIP PERMITS, TO PROVIDE FOR NONRESIDENT AGRICULTURAL HARVESTING EQUIPMENT SPECIAL FUEL PERMITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1842, R.C.M. 1947, is amended to read as follows:

"**84-1842. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit — agents by whom issued.**

(1) Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe by order, rule or regulation.

(2) Any nonresident upon entering the state of Montana with agricultural harvesting equipment powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a nonresident agricultural

harvesting equipment special fuel permit. The permit will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen and such other enforcing agents as department of revenue may prescribe by order, rule or regulation."

Section 2. Section 84-1843, R.C.M. 1947, is amended to read as follows:

"**84-1843. Fees for temporary permits — time of expiration — disposition of fees — forms.** *(1)* The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars ($20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state department of revenue. Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state department of revenue.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment shall cost thirty dollars ($30) per unit for a period beginning July 1 and ending October 31. The permit shall not be transferable. A unit shall be defined as:

(a) One (1) truck suitable for hauling produce, and

(b) One (1) harvesting machine, and

(c) Pick-up trucks and any other accessory vehicles. All fees collected shall be remitted to the department of revenue. Nonresident temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the department of revenue."

Approved April 14, 1975.

CHAPTER NO. 441

AN ACT TO AMEND SECTIONS 50-1601, 50-1602 THROUGH 50-1610, 50-1614, 50-1615, 50-1616, 50-1034 THROUGH 50-1039, 50-1041 THROUGH 50-1046, 50-1052, 50-1053, 50-1054, AND 50-1055, R.C.M. 1947, TO PROVIDE FOR CONTROL OF SURFACE EFFECTS OF UNDERGROUND MINING OPERATIONS AND THE RECLAMATION OF LANDS AND WATERS AFFECTED BY UNDERGROUND MINING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1601, R.C.M. 1947, is amended to read as follows:

"**50-1601. Short title.** This act shall be known and may be cited as "The Strip *and Underground* Mine Siting Act.""

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Section 2. Section 50-1602, R.C.M. 1947, is amended to read as follows:

"**50-1602. Policy of state — purposes of act — exercise of general police power.** (1) It is the policy of this state to provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(2) It is the purpose of this act:

(a) to vest in the department the authority to review new strip mine *and new underground mine* site locations and reclamation plans and either approve or disapprove such locations and plans and to exercise general administration and enforcement of this act; and

(b) to vest in the board the authority to adopt rules, to suspend and revoke permits, and to conduct hearings; and

(c) to satisfy the requirement of article IX, section 2 of the constitution of this state, that all lands disturbed by the taking of natural resources be reclaimed; and

(d) to insure that adequate information is available on areas proposed for strip mining *or underground mining* so that mining and reclamation plans may be properly formulated to accommodate areas that are suitable for strip mining *or underground mining.*

(3) This act is deemed to be an exercise of the general police power to provide for the health and welfare of the people."

Section 3. Section 50-1603, R.C.M. 1947, is amended to read as follows:

"**50-1603. Definitions.** When used in this act, unless a different meaning clearly appears from the context:

(1) "Operation" means all of the premises, facilities, railroad loops, roads, power lines, and equipment used in the process of producing and removing mineral from a designated strip mine *or underground mine* area.

(2) "Board" means the board of land commissioners as provided for in article X, section 4 of the constitution of this state.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "New mine" means a strip *or underground* mining operation proposed for an area of land which the department determines, because of distance from an existing strip mine *or underground mine* operation *or their respective facilities* or because of important differences in topography, soils, wildlife, geologic structure, *aquifers* or vegetation from an existing strip mine *or underground mine* operation, does not constitute an expansion of an existing operation.

(5) "Preparatory work" means *all* on site disturbances, excluding

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prospecting, associated with the initiation of a new strip mine *or underground mine*, including but not limited to the construction of railroad spurs or loops, buildings to house mining operations, roads, storage and train load-out facilities, transmission lines, erection of draglines and loading shovels and other *associated facilities.*

(6) "Strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(7) "Mineral" means mineral as defined in section 50-1036 (1), R.C.M. 1947.

(8) "Person" means a person, partnership, corporation, association or other legal entity, or any political subdivision or agency of the state.

(9) "Operator" means a person who intends to operate a new strip mine *or new underground mine* involving the removal of more than ten thousand (10,000) cubic yards of mineral or overburden.

(10) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts or incline planes connected with excavations penetrating the mineral stratum or strata are utilized."

Section 4. Section 50-1604, R.C.M. 1947, is amended to read as follows:

"50-1604. Orders and rules of board — hearings. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to new strip mines *and to new underground mines* and preparatory work to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board."

Section 5. Section 50-1605, R.C.M. 1947, is amended to read as follows:

"50-1605. Administration — functions of department. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

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(2) shall order the suspension of any permit for failure to comply with this act, any rule adopted under this act or permit issued pursuant to this act;

(3) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(4) shall make investigations and inspections necessary to insure compliance with this act;

(5) shall encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to new strip mines, *new underground mines* and reclamation of lands and waters affected by preparatory work;

(6) shall adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration."

Section 6. Section 50-1606, R.C.M. 1947, is amended to read as follows:

"**50-1606. Permit required to engage in preparatory work.** No person may commence preparatory work until the operator shall have first obtained from the department a mine site location permit for a new strip mine *or a new underground mine*, or a permit under chapter 10, Title 50, R.C.M. 1947, if the application for such permit under Title 50 includes an appropriate long-range mining plan acceptable to the department."

Section 7. Section 50-1607, R.C.M. 1947, is amended to read as follows:

"**50-1607. Application for permit — contents — permit authorization — notification — fee — bond.** (1) A person desiring a mine site location permit shall file with the department an application which shall contain a reclamation plan for any preparatory work and such other information the department deems necessary to determine if the proposed area to be affected by the operation is appropriate for the location of a new strip mine *or a new underground mine.* The department may require any information included in, but not limited to, an application for a strip mining permit *or underground mining permit* as required by chapter 10, Title 50, R.C.M. 1947.

(2) A mine site location permit shall authorize the applicant to engage in preparatory work upon the area described in the application and designated in the permit for a period of one (1) year from the date of issuance and is renewable until the applicant has applied for and received a strip mining *or underground mining* permit in accordance with chapter 10, Title 50, R.C.M. 1947.

(3) The department shall notify the applicant within three hundred sixty-five (365) days of receipt of a complete application if the proposed site is an acceptable location for development of a new strip mine *or a new underground mine.* If the site is approved, the department shall issue the applicant a mine site location permit. If the location is not approved, the department shall notify the applicant in writing, setting forth reasons

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why the location is not acceptable. The department shall also notify the applicant within three hundred sixty-five (365) days of receipt of a complete application whether the proposed reclamation plan is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for nonacceptance of the plan. It may propose modifications, delete areas, or reject the entire plan.

(4) A fee of fifty dollars ($50) shall be paid before the mine site location permit required in this act may be issued. The operator shall also file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars ($200) nor more than ten thousand dollars ($10,000) for each acre or fraction thereof of the area of land to be disturbed by preparatory work, with a minimum bond of five thousand dollars ($5,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the surface *and subsurface* disturbances, the future suitable use of the land involved and the cost of removing or burying facilities, *subsidence stabilization, water controls,* backfilling, grading, topsoiling, and reclamation to be required. Notwithstanding the above limits the bond may not be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 8. Section 50-1608, R.C.M. 1947, is amended to read as follows:

"**50-1608. Refusal of permit — grounds.** (1) The department may not issue a permit under this act if it finds that a new strip mine *or a new underground mine* is not consistent with the purposes and policies of this act.

(2) The department shall not approve a new strip mining site, *a new underground mining site* or preparatory work site for any areas of land or water included in the application if the department determines that the area could not be approved under the criteria specified in section 50-1042, R.C.M. 1947.

(3) The department shall not issue a permit under this act if a proposed reclamation plan does not meet the requirements of Title 50, chapter 10, R.C.M. 1947."

Section 9. Section 50-1609, R.C.M. 1947, is amended to read as follows:

"**50-1609. Notice of noncompliance — suspension of permits — conditions required for reinstatement of permits.** (1) If any of the requirements of this act or rules or orders of the department and the board have not been complied with within the time limits set by the department or the board or by this act, the department shall serve a notice of noncompliance on the operator, or where found necessary, the commissioner shall order the suspension of a permit. The notice or order shall be handed to the operator in person or served by registered mail addressed to the permanent address shown on the application for a permit. The notice of

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noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this act or the rules or orders of the department and the board. If the operator has not complied with the requirement set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department.

(2) Any additional strip mining, *or underground mining,* or mine site location permits held by an operator whose mine site location permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this act in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator has paid into the reclamation account a sum together with the value of the bond, the board finds adequate to reclaim the lands. The department may not issue any additional permits to an operator who has repeatedly been in noncompliance or violation of this act."

Section 10. Section 50-1610, R.C.M. 1947, is amended to read as follows:

"**50-1610. Receipts paid into special fund — use of fund.** (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action."

Section 11. Section 50-1614, R.C.M. 1947, is amended to read as follows:

"**50-1614. Submitted information may be accepted to meet strip mining or underground mining permit requirements.** The department may choose to accept information submitted under this act to the extent it is applicable and relevant as satisfying the requirements of chapter 10, Title 50."

Section 12. Section 50-1615, R.C.M. 1947, is amended to read as follows:

"**50-1615. Termination of permit.** A mine site location permit granted by the department in accordance with the provisions of this act shall remain in full force and effect until the provisions of the permit are complied with and the bond is released, except that those areas of land covered by a mine site location permit for which a strip mining *or an underground mining* permit is granted pursuant to the provisions of chapter 10, Title 50, shall be released from the terms and provisions of the mine site location permit."

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Section 13. Section 50-1616, R.C.M. 1947, is amended to read as follows:

"**50-1616. Effect of strip mine or underground mine siting permit on subsequent strip mining or underground mining permits.** When the department has sufficient information to approve or disapprove a mine site location permit application on either the entire area being considered for a mine site location permit or a portion thereof on the grounds listed in section 50-1042 (2) and (4), it shall so state in a written statement to the operator. This decision is binding on the department with regard to strip mining *or underground mining* permit applications as specified in chapter 10, Title 50, R.C.M. 1947, unless:

(1) new information is submitted or obtained in compliance with chapter 10, Title 50, which indicates a situation not existing or known at the time of the issuance of a permit under this act;

(2) an application under this act misrepresented information related to the criteria;

(3) a situation develops because of strip mining *or underground mining* operations which was not in existence at the time of the issuance of a permit under this act."

Section 14. Section 50-1034, R.C.M. 1947, is amended to read as follows:

"**50-1034. Short title.** This act shall be known and may be cited as "The Montana Strip and *Underground Mine* Reclamation Act.""

Section 15. Section 50-1035, R.C.M. 1947, is amended to read as follows:

"**50-1035. Policy of state — findings.** It being the declared policy of this state and its people

—to maintain and improve the state's clean and healthful environment for present and future generations,

—to protect its environmental life-support system from degradation,

—to prevent unreasonable degradation of its natural resources,

—to restore, enhance, and preserve its scenic, historic, archeologic, scientific, cultural, and recreational sites,

—to demand effective reclamation of all lands disturbed by the taking of natural resources, and

—to require the legislature to provide for proper administration and enforcement, create adequate remedies, and set effective requirements and standards (especially as to reclamation of disturbed lands) in order to achieve the aforementioned objectives,

the legislature hereby finds and declares:

(1) That, in order to achieve the aforementioned policy objectives, promote the health and welfare of the people, control erosion and pollu-

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tion, protect domestic stock and wildlife, preserve agricultural and recreational productivity, save cultural, historic, and aesthetic values, and assure a long-range dependable tax base, it is reasonably necessary to require, after the effective date of this act, that all strip mining *and underground mining* operations be limited to those for which annual permits are granted, that no permit be issued until the operator presents a comprehensive plan for reclamation and restoration, together with an adequate performance bond, and the plan is approved, that certain other things must be done, that certain remedies are available, and that certain lands because of their unique or unusual characteristics may not be strip mined *or underground mined* under any circumstances, all as more particularly appears in the remaining provisions of this act.

(2) That this act be deemed to be an exercise of the authority granted in the Montana constitution, as adopted June 6, 1972, and in particular, a response to the mandate expressed in article IX thereof, and also be deemed to be an exercise of the general police power to provide for the health and welfare of the people."

Section 16. Section 50-1036, R.C.M. 1947, is amended to read as follows:

"**50-1036. Definitions.** Unless the context requires otherwise in this act:

(1) "mineral" means coal and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all *land overlying any tunnels, shafts or other excavations used to extract the mineral,* lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, *processing or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining;*

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing

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mineral from a designated strip mine *or underground mine* area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining *or underground mining* who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the cut, open pit, *shaft, or excavation* is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in Title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, *subsidence stabilization, water control,* grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining *or underground mining* under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five percent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

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(20) "underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized;

(21) "aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(22) "subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations."

Section 17. Section 50-1037, R.C.M. 1947, is amended to read as follows:

"50-1037. Orders and rules of board — hearings. The board:

(1) shall issue after an opportunity for a hearing, orders requiring an operator to adopt the remedial measures necessary to comply with this act and rules adopted under this act;

(2) shall issue after an opportunity for a hearing, a final order directing the department to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the board requiring remedial measures have not been complied with according to the terms herein;

(3) shall adopt after an opportunity for a hearing, general rules pertaining to strip mining *and to underground mining* to accomplish the purposes of this act;

(4) shall conduct hearings under provisions of this act or rules adopted by the board."

Section 18. Section 50-1038, R.C.M. 1947, is amended to read as follows:

"50-1038. Administration — functions of department. The department:

(1) shall exercise general supervision, administration, and enforcement of this act and all rules and orders adopted under this act;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, *subsidence stabilization, water control,* backfilling, grading, highwall reduction, topsoiling and for the reclamation of the area of land affected by his operation;

(3) shall order the suspension of any permit for failure to comply with this act or any rule adopted under this act;

(4) shall order the halting of any operation that is started without first having secured a permit as required by this act;

(5) shall make investigations and inspections necessary to insure compliance with this act;

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(6) may encourage and conduct investigations, research, experiments and demonstrations, and collect and disseminate information relating to strip mining *and to underground mining* and reclamation of lands and waters affected by strip mining *and underground mining*;

(7) may adopt rules with respect to the filing of reports, the issuance of permits and other matters of procedure and administration."

Section 19. Section 50-1039, R.C.M. 1947, is amended to read as follows:

"50-1039. Permit required to engage in strip mining or underground mining — application for permit — contents — fee — bond. (1) An operator may not engage in strip *or underground* mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip *or underground* mining upon the area of land described in his application and designated in the permit for a period of one (1) year from the date of its issuance. Such permit shall be renewable from year to year thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 50-1043 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 50-1042, 50-1046 *and 50-1050.*

(2) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

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(g) whether the applicant is in compliance with section 50-1050 and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten percent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of section 50-1050 and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining *or underground mining* license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining *or underground mining* bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip *or underground* mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set *unless the department determines that closer intervals are required.* Each cross-section shall depict the thickness and geological character of all known strata beginning with the top soil; *in addition, each application for an underground mining permit shall be accompanied by cross-sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit year. These cross-sections shall also include all existing shafts, entries and haulageways;*

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip mining *or underground mining* permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(3) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining *or surface mining* and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

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(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the *final surface and underground water* drainage plan on and away from the area of land affected. This plan shall indicate the directional *and volume* flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, *subsidence stabilization, water control,* grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(5) An application fee of fifty dollars ($50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred

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dollars ($200) nor more than twenty-five hundred dollars ($2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars ($2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading, highwall reduction, *subsidence stabilization, water control,* topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 20. Section 50-1041, R.C.M. 1947, is amended to read as follows:

"**50-1041. Prospecting permit — application — contents — reclamation plan — fee — bond.** (1) On and after the effective date of this act prospecting by any person on land not included in a valid strip mining *or underground mining* permit shall be unlawful without possessing a valid prospecting permit issued by the department as provided in this section. No prospecting permit shall be issued until the operator submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this act.

(2) An application for a prospecting permit shall be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application shall include among other things, a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface mining *or underground mining* map and reclamation plan under this act. The department shall determine, by rules and regulations, the precise nature of such required prospecting map and reclamation plan. Any operator who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and such other information as may be required by the department. The applicant must state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application shall be accompanied by a fee of one hundred dollars ($100). This fee shall be used as a credit toward the strip mining *or underground mining* permit fee provided by this act if the area covered by the prospecting permit becomes covered by a valid surface mining *or underground mining* permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip mining *or underground mining* reclamation and revegetation bonds under this act.

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(5) In the event that the holder of a prospecting permit desires to strip mine *or underground mine* the area covered by the prospecting permit, and has fulfilled all the requirements for a strip mining *or underground mining* permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip mining *or underground mining* permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip mining *or underground mining* reclamation plan shall be promptly reclaimed.

(6) The prospecting permit shall be valid for one (1) year, and shall be subject to renewal, suspension, and revocation in the same manner as strip mining *or underground mining* permits under this act.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports, as are required of strip mining *or underground mining* operators under this act."

Section 21. Section 50-1042, R.C.M. 1947, is amended to read as follows:

"**50-1042. Refusal of permit — grounds.** (1) An application for a prospecting, strip mining *or underground mining* permit shall not be approved by the department if there is found on the basis of the information set forth in the application, an on-site inspection, and an evaluation of the operation by the department that the requirements of the act or rules will not be observed or that the proposed method of operation, backfilling, grading, *subsidence stabilization, water control,* highwall reduction, topsoiling, revegetation, or reclamation of the affected area cannot be carried out consistent with the purpose of this act.

(2) The department shall not approve the application for *a* prospecting, strip mining *or underground mining* permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics, or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this act, land is defined as having such characteristics if it possesses special, exceptional, critical or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock; or

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future; or

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.

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(3) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip mining *or underground mining* permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, *subsidence,* landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists.

(4) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip mining *or underground mining* permit application before it can be approved."

Section 22. Section 50-1043, R.C.M. 1947, is amended to read as follows:

"**50-1043. Reclamation operations — submission and action on plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act, shall reclaim and revegetate the land affected by his operation, *except that underground tunnels, shafts, or other subsurface excavations need not be revegetated.* Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, *subsidence stabilization, water control,* topsoiling and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and plans of backfilling, *subsidence stabilization, water control,* grading, highwall reduction, topsoiling and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, *subsidence,* landslides, water pollution, and hazards dangerous to life and property. The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and sections 50-1044, 50-1045 and 50-1046. The plan shall be submitted to the department and the department shall notify the applicant by registered mail within one hundred twenty (120) days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the one hundred twenty (120) days an additional one hundred twenty (120) days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable and it may propose modifications, delete areas, or reject the entire plan. A land owner, operator, or any person aggrieved by the decision of the department may, by written notice, request a hearing by the board. The board shall notify the person by registered mail within twenty (20) days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(2) In addition to the method of operation, grading, backfilling, *subsidence stabilization, water control,* highwall reduction, topsoiling and

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reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) seal off, as directed by rules, *tunnels, shafts, or other openings or* any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff *or underground mine waters* so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands and water pollution, ensure public safety, and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas; constitute a hazard to human life or health; constitute a hazard to domestic livestock or to a viable agricultural operation; or any other restrictions the board may consider necessary;

(g) stockpile and protect from erosion all mining and processing wastes until such wastes can be disposed of according to the provisions of this act;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this act and the rules of the board;

(i) seal all portals, entryways, drifts, shafts or other openings between the surface and underground mine workings upon abandonment.

(3) An operator may not throw, dump, pile or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under section 50-1039, or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of the area of land which is under permit and for which a bond has been posted under section 50-1039."

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Section 23. Section 50-1044, R.C.M. 1947, is amended to read as follows:

"50-1044. Area mining required — grading and revegetation — release of bond — alternative plan. (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required *where strip mining is proposed.* All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, *subsidence stabilization, water control,* highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, *subsidence stabilization, sealing,* grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, *subsidence stabilization, water controls,* and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars ($200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans,

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the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 50-1039 (2) (k)."

Section 24. Section 50-1045, R.C.M. 1947, is amended to read as follows:

"**50-1045. Planting of vegetation following grading of disturbed area.** *(1)* After the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant such legumes, grasses, shrubs, and trees upon the area of land affected as are necessary to provide a suitable permanent diverse vegetative cover capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover shall be defined by rules of the board.

(2) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1) of this section."

Section 25. Section 50-1046, R.C.M. 1947, is amended to read as follows:

"**50-1046. Time of commencement of reclamation.** The operator shall commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of strip mining *or underground mining* of that area in accordance with plans previously approved by the department. Those grading, backfilling, *subsidence stabilization,* topsoiling, and water management practices that are approved in the plans shall be kept current with the operation as defined by rules of the board and a permit or supplement to a permit may not be issued, if in the discretion of the department, these practices are not current."

Section 26. Section 50-1052, R.C.M. 1947, is amended to read as follows:

"**50-1052. Receipts paid into special fund — use of fund.** (1) All fees, forfeit funds, and other moneys available or paid to the department under the provisions of this act shall be placed in the state treasury and credited to a special agency account to be designated as the mining and reclamation fund. This fund shall be available to the department by appropriation and shall be expended for the administration and enforcement of this act and for the reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unen-

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cumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action."

Section 27. Section 50-1053, R.C.M. 1947, is amended to read as follows:

"**50-1053. Funds received by board — reclamation work by board — rehabilitation of unreclaimed lands.** (1) The board may receive any federal funds, state funds, or any other funds for the reclamation of land affected by strip mining *or underground mining*. The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining *or underground mining* that have not been reclaimed and rehabilitated in accordance with the standards of this act."

Section 28. Section 50-1054, R.C.M. 1947, is amended to read as follows:

"**50-1054. Reclamation of lands after bond forfeited.** The board may reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited and to use moneys appropriated from the mining and reclamation fund for such purposes."

Section 29. Section 50-1055, R.C.M. 1947, is amended to read as follows:

"**50-1055. Mandamus to compel enforcement of law — action for damage to water supply — damage from surface water — other remedies.** (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part

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of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining *or underground mining.*

(4) A servient tract of land is not bound to receive water contaminated by strip mining *or underground mining* on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of waters contaminated by strip mining *or underground mining* on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section."

Approved April 14, 1975.

CHAPTER NO. 442

AN ACT TO EXEMPT LIVESTOCK AND CERTAIN OTHER UNPROCESSED AGRICULTURAL PRODUCTS LESS THAN A CERTAIN AGE FROM TAXATION BY AMENDING SECTION 84-202, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal,

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benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(2) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(3) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(4) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(5) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(6) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month."

Approved April 16, 1975.

CHAPTER NO. 443

AN ACT AMENDING SECTION 94-2-101 (28), R.C.M. 1947, TO PROVIDE THAT AWARENESS OF THE PROBABLE RESULT OF A PERSON'S CONDUCT CONSTITUTES KNOWLEDGE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"**94-2-101. General definitions.** Unless otherwise specified in the statute all words will be taken in the objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective, or by a common purpose or plan and which resulted in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true; or

(b) fail to correct a false impression which the offender previously has created or confirmed; or

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(c) prevent another from acquiring information pertinent to the disposition of the property involved; or

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class or association to hatred, contempt, ridicule, degradation or disgrace in society, or injury to his or its business or occupation.

(13) "Deprive" means to withhold property of another:

(a) permanently; or

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two (2) persons of the same sex, or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding one (1) year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(18) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any person or entity in whose welfare he is interested.

(20) "He, she, it." The singular term shall include the plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by

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statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum (½ of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (½ of 1%) of alcohol by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep; or

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"—A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. *A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct.* When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(30) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(31) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term, or fine, or both or the sentence imposed is imprisonment in the state prison for any term of one year or less.

(32) "Negligently"—A person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he

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consciously disregards a risk that the result will occur or that the circumstance exists; or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(33) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(34) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property.

(35) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two (2) or more units separately secured or occupied is a separate occupied structure.

(36) "Offender" means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

(37) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(38) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

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(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or otherwise of value to the owner; things growing on or affixed to, or found on land, or part of or affixed to any building; electricity, gas and water; birds, animals and fish, which ordinarily are kept in a state of confinement; food and drink, samples, cultures, micro-organisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes or models thereof, or any other articles, materials, devices, substances and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect or record secret scientific, technical, merchandising production or management information, designed process, procedure, formula, invention or improvement.

(50) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(51) "Public place" means any place to which the public or any substantial group thereof has access.

(52) "Public servant" means any officer or employee of government, including but not limited to, legislators, judges, and firemen, and any person participating as a juror, advisor, consultant, administrator, execu-

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tor, guardian or court-appointed fiduciary; but the term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(53) "Purposely"—A person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(54) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function or process of any bodily member or organ and includes serious mental illness or impairment.

(55) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(56) "Sexual intercourse" means penetration of the vulva, anus or mouth of one person by the penis of another person, or penetration of the vulva or anus of one person by any body member of another person or penetration of the vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

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(e) expose any person to hatred, contempt or ridicule; or

(f) harm the credit or business repute of any person; or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars ($150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars ($150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding.

(68) "Without consent" means:

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(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping, to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old."

Approved April 16, 1975.

CHAPTER NO. 444

AN ACT TO AMEND SECTION 40-2726, R.C.M. 1947, TO PROVIDE THE STATE AUDITOR AUTHORITY TO DEPOSIT FEES AND LICENSES IN CLEARING ACCOUNTS IN THE FEDERAL AND PRIVATE GRANT CLEARANCE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-2726, R.C.M. 1947, is amended to read as follows:

"**40-2726. Fees and licenses.** (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i) Application for original certificate of authority: For filing applications for certificate of authority, articles of incorporation (except as provided in subsection (b), below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued:

Domestic insurers ..... $ 30.00

Foreign insurers 300.00

(ii) Annual continuation of certificate of authority 300.00

(iii) Reinstatement of certificate of authority 25.00

(b) Articles of incorporation:

(i) Filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state. 20.00

(ii) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

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(c) Filing bylaws or amendment thereto, where required..... 5.00

(d) Filing annual statement of insurer, other than as part of application for original certificate of authority..... 25.00

(e) Agent's license, property, casualty, surety, title insurance agents, and including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) Application for original license, and including issuance of license, if issued 10.00

(ii) Appointment of agent, each insurer..... 5.00

(iii) Annual renewal or appointment of agent, each insurer..... 5.00

(iv) Temporary license 10.00

(f) Solicitor's license:

(i) Application for original license, including issuance of license, if issued..... 5.00

(ii) Annual continuation of license..... 5.00

(g) Agent's license, life, disability insurance:

(i) Application for original license, each insurer..... 5.00

(ii) Annual continuation or renewal of license, each insurer..... 5.00

(iii) Temporary license, each insurer 5.00

(h) Examination for license as agent or solicitor, each examination. 10.00

(i) Surplus line agent's license:

(i) Application for original license and for issuance of license, if issued. 25.00

(ii) Annual renewal or continuation of license..... 25.00

(j) Adjuster's license:

(i) Application for original license and for issuance of license, if issued. 10.00

(ii) Annual continuation or renewal of license..... 10.00

(k) Insurance vending machine license, each machine, each year . 10.00

(l) Commissioner's certificate under seal (except when on certificates of authority or licenses)..... 1.00

(m) Copies of documents on file in the commissioner's office, per page. ..... .50

(n) Policy forms:

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(i) Filing each policy form 25.00

(ii) Filing each application, rider, endorsement, amendment, insert page, schedule or rates and clarification of risks 10.00

(iii) Maximum charge if policy and all forms submitted at one time, or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund *or federal and private grant clearance fund* of this state all fees and licenses received by him under this section.

(3) The fees provided for in this section shall be in lieu of all fees heretofore payable with respect to insurance or insurers under section 25-101."

Approved April 16, 1975.

CHAPTER NO. 445

AN ACT TO REDEFINE CIGARETTE VENDORS, AND TO DEFINE CIGARETTE SUB-JOBBERS; AND TO REQUIRE LICENSING OF CIGARETTE SUB-JOBBERS AND CIGARETTE VENDORS; AMENDING SECTIONS 84-5606.2, 84-5606.3, 84-5606.5, AND 84-5606.8, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-5606.2, R.C.M. 1947, is amended to read as follows:

"**84-5606.2. Definitions.** As used in this act the following definitions shall apply unless the context otherwise requires:

(a) The word "department" shall mean the state department of revenue of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association however formed.

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper, or any other substance or material except tobacco.

(d) The words "insignia" or "indicia" shall mean the impression or mark approved by the state department of revenue, under the provisions of this act.

(e) The words "full face value of insignia" shall mean the total amount of the tax levied under this act.

(f) The words "public warehouses" shall mean agents or representa-

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tives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.

(g) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.

(h) The words "licensed wholesaler" shall mean a wholesaler duly licensed under the provisions of this act.

(i) The words "cigarette vendor" shall mean and include any person doing business in the state, who purchases cigarettes through a wholesaler, *sub-jobber, or retailer for* ten (10) or more cigarette vending machines, which he operates for a profit in premises or locations other than his own. Such person shall be treated as a wholesaler. Any person who operates less than ten (10) cigarette vending machines shall be treated as a retailer.

(j) The word *"sub-jobber"* shall mean *and include* any person who *purchases cigarettes from a licensed wholesaler with the Montana cigarette tax insignia affixed thereto and sells or offers to sell such cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers shall not constitute such retailers as subjobbers. It is further provided that a sub-jobber shall use the license in the interest of the general public. If during any month, more than thirty-five percent (35%) of volume of cigarette sales be with any retail client whose business is controlled directly or indirectly through sanguinity or affinity with the owner, or employer for such retail business, the license shall be deemed to have been used or to be intended to be used in violation of section 84-5606.8.*

(k) The words *"licensed sub-jobbers"* shall mean *a sub-jobber* duly licensed under the provisions of this act, *and they shall be treated as wholesalers.*

(l) The word "retailer" shall mean any person other than a wholesaler, *sub-jobber, or cigarette vendor,* who is engaged in the business of selling cigarettes at retail.

(m) The words "licensed retailer" shall mean any person other than a wholesaler, *sub-jobber, or cigarette vendor,* who is duly licensed under the provisions of this act.

(n) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by section 87A-2-106, R. C. M. 1947, or by gift, barter or exchange."

Section 2. Section 84-5606.3, R.C.M. 1947, is amended to read as follows:

"84-5606.3. Wholesaler's, sub-jobber's, retailer's, and cigarette

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vendor's licenses — multiple places of business — application forms. Every wholesaler, *sub-jobber,* retailer, *or cigarette vendor* shall obtain a license from the department before engaging in the business of wholesaler, *sub-jobber,* or retailer, *or cigarette vendor.* A separate application and a separate license shall be required for each place of business owned, controlled or operated by such wholesaler, *sub-jobber,* retailer, *or cigarette vendor* within the state of Montana. Application forms shall require the type and general description of applicant organizations, names of all known owners, and such other pertinent information as the *department* may require in regularly promulgated regulations."

Section 3. Section 84-5606.5, R.C.M. 1947, is amended to read as follows:

"**84-5606.5. Wholesaler's, sub-jobber's, retailer's, and cigarette vendor's license fees — renewal — display of license.** Each application for a wholesaler's license shall be accompanied by a fee of fifty dollars ($50) effective July 1, 1969. *Each application for a sub-jobber's license shall be accompanied by a fee of fifty dollars ($50) effective July 1, 1975.* Each application for a retailer's license shall be accompanied by a fee of five dollars ($5) effective July 1, 1969. These licenses shall be renewed annually upon payment of the annual fee in the amount set forth above, and shall be effective for one year, without proration, *and are not transferable.* Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled or operated by such wholesaler, *sub-jobber,* retailer, *or cigarette vendor. Each cigarette vendor shall affix a license decal furnished by the department of revenue in a prominent position on each vending machine.*"

Section 4. Section 84-5606.8, R.C.M. 1947, is amended to read as follows:

"**84-5606.8. Revocation or suspension of license — hearing and appeal — duration — sale of cigarettes after revocation or suspension a misdemeanor — forfeiture.** The department may revoke or suspend the license of any wholesaler, *sub-jobber,* retailer, *or cigarette vendor* for failure to comply with any provision of this act or of the *Montana* Cigarette Sales Act (sections 51-301 through 51-314, R. C. M. 1947), and with any lawful rule or regulation of the department made pursuant to said laws. Any person aggrieved by such revocation or suspension may apply to the department for a hearing which shall be open to the public, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed one (1) year. Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state."

Approved April 16, 1975.

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CHAPTER NO. 446

AN ACT TO AMEND SECTION 66-2427, R.C.M. 1947, TO PROVIDE FOR PLUMBING INSPECTION BY A PERMIT SYSTEM; TO PROVIDE FOR A DEPOSIT OF FEES TO EARMARKED REVENUE FUND TO BE USED FOR ADMINISTRATION, INSPECTION AND ENFORCEMENT OF THE STATE PLUMBING CODE AND STATE PLUMBING LAWS; AND TO PROVIDE PENALTIES FOR VIOLATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2427, R.C.M. 1947, is amended to read as follows:

"**66-2427. Permit fee — payment — penalties.** *(1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the board of plumbers.*

A separate permit shall be obtained for each building or structure.

No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(2) *No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of section 66-2426 or 66-2401. Nothing contained in this act shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act.*

(3) *Persons required by this section to apply for a permit shall make application on forms provided by the board or authorized representative. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The board of plumbers or its authorized representative may require sketches, specifications or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.*

If the board determines that the sketches, specifications, drawings, descriptions and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the board.

(4) *Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision*

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does not apply to emergency work when it is proved to the satisfaction of the board of plumbers or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

The board of plumbers shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the earmarked revenue fund of the board of plumbers for use in the administration and enforcement of this act and the Montana state plumbing code.

(5) *All plumbing and drainage systems may be inspected by the board of plumbers or their authorized representative to insure compliance with the requirements of the state plumbing code.*

(6) It is the duty of the person doing work authorized by the permit to notify the board orally or in writing, that the work is ready for inspection. The notification shall be given not less than twenty-four (24) hours before the work is to be inspected.

It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

(7) *Whenever any work is being done contrary to the provisions of the state plumbing code, the board or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.*

(8) *The board may suspend or revoke a permit, whenever it is issued in error or on the basis of incorrect information supplied, or work performed thereunder is in violation of any of the provisions of Title 66, chapter 24, R.C.M. 1947."*

Approved April 16, 1975.

CHAPTER NO. 447

AN ACT TO AMEND SECTIONS 69-5201, AND 69-5212, R.C.M. 1947,

TO MEET FEDERAL REQUIREMENTS BY REDEFINING OUTPATIENT FACILITIES, INCLUDING A DEFINITION OF CONSTRUCTION AND REQUIRING APPROVAL FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE CONSTRUCTION OF HEALTH CARE FACILITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-5201, R.C.M. 1947, is amended to read as follows:

"69-5201. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Hospital" means any health care facility licensed by the department of health and environmental sciences to provide, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care. A health care facility in order to be licensed as a hospital must have an organized medical staff; shall provide twenty-four (24) hour nursing care by licensed professional nurses and shall be in compliance with the regulations for licensed hospitals as promulgated and adopted by the state department of health and environmental sciences.

(2) "Hospital related facility" means a facility licensed by the department of health and environmental sciences to provide any or all of the following: diagnosis; treatment; medical or nursing care or medically related rehabilitation services. Such facilities include, but are not limited to, outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcohol and drug dependency centers and half-way houses. A health care facility in order to be licensed as a "hospital related facility" shall be in compliance with the regulations, for the specific category of facility, as promulgated and adopted by the state department of health and environmental sciences.

(a) "Outpatient facility — A" means a physically separate component of a licensed hospital, or a medical clinic or other establishment owned or operated by a licensed physician or physicians, which has an observation bed or beds and which provides to patients, not requiring hospitalization, the services of persons licensed to practice medicine or dentistry in the state of Montana. An "observation bed" is a bed used by a patient recovering from surgery or other treatment. No patient shall be allowed to remain in an outpatient facility for more than six (6) hours.

(b) "Outpatient facility — B" means a facility operated physically apart from a hospital, other than a medical clinic or other establishment owned or operated by a licensed physician or physicians, which provides to ambulatory patients, not requiring hospitalization, the services of persons licensed to practice medicine or dentistry in the state of Montana, but which does not have an observation bed or beds as defined in subsection (2) (a).

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(c) "Public health centers" means a publicly owned facility utilized by a local health unit for the provision of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(d) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision including: medical services and evaluation; and psychological, social and vocational services and evaluation.

(e) "Long-term care facility" means a place which provides skilled nursing care to a total of two (2) or more persons or personal care to more than three (3) persons, who by reason of illness or disability are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage, and may be defined as follows:

(i) "Skilled nursing facilities" are establishments furnishing continuous skilled nursing care and related services twenty-four (24) hours a day.

(ii) "Intermediate care facilities — A" are establishments furnishing limited skilled nursing care and personal care.

(iii) "Intermediate care facilities — B" are establishments providing only personal care and services to residents.

(iv) "Combination facilities" are establishments providing two (2) or more of the following services: skilled nursing care and intermediate care — A and/or B.

(v) Hotels, motels, boarding houses, rooming houses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered to be long-term care facilities.

(f) "Infirmary" means a facility located in a university, college, government institution, or industry, for the treatment of the sick or injured.

(i) "Infirmary — A" provides outpatient and inpatient care.

(ii) "Infirmary — B" provides outpatient care only.

(3) "Person" means any individual, firm, partnership, association or corporation, or governmental unit.

(4) "Governmental unit" means the state, a state agency, any county, municipality, political subdivision of the state or an agency of any political subdivision.

(5) "Resident" means a person who is in a long-term care facility as a patient or for personal care.

(6) "Health care facility" means a hospital, hospital related facility or long-term care facility.

(7) "Department" means state department of health and environmental sciences.

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(8) "Construction" means the erection, expansion, remodeling or alteration of any new or existing facility, the capital expenditure for which amounts to fifty thousand dollars ($50,000) or more in any twelve month period; or any substantial change in services, or any increase or decrease in the number of beds in excess of ten percent (10%) of the licensed capacity of the facility, or in excess of ten (10) beds, whichever is the lesser; or any purchase of therapeutic or diagnostic equipment (excluding replacement of existing equipment) in any twelve month period, at a cost exceeding two percent (2%) of the facility's total operating costs for the most recently completed fiscal year up to a maximum of one hundred thousand dollars ($100,000), or exceeding ten thousand dollars ($10,000), whichever is larger. All exemptions from this definition must nevertheless be consistent with the state medical facilities plan of the department."

Section 2. Section 69-5212, R.C.M. 1947, is amended to read as follows:

"69-5212. Construction, expansion, remodeling, or alteration of a facility — approval of plans and specifications by the department of health and environmental sciences.

(1) The department may adopt rules to require an applicant or licensee who contemplates *construction of,* alteration or addition to a *health care* facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction. Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility.

(2) Penalties for failure to obtain prior approval of the department are as follows:

(a) Any person who constructs any new health care facility as defined in section 69-5201 without prior approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), the fine to be deposited in the state general fund, and this new facility is not eligible for licensure as a health care facility as defined in section 69-5201.

(b) Any person who expands, remodels or alters an existing health care facility as defined in section 69-5201 without prior written approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), the fine to be deposited in the state general fund. An application for approval must be submitted to the department in a form together with information as the department may prescribe. The application shall include:

(i) a narrative description of the proposed project;

(ii) the number and type of beds and/or services to be provided;

(iii) the estimated cost;

(iv) the source of financing;

(v) the expected time for completion of the proposed project; and

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(vi) a simple line-drawing showing major dimensions of the proposed project.

Within seven (7) days after receipt of the application by the department, it shall send notice thereof to every health care facility in the same licensing class within the state of Montana located within one hundred (100) miles of the applicant facility. The department shall notify the applicant, in writing, of the approval or disapproval of the proposal within ninety (90) days after the application is submitted to the department, otherwise the application is deemed approved.

(3) No application may be approved unless the action proposed:

(a) is necessary to provide required health care in the area to be served;

(b) can be economically accomplished and maintained; and

(c) will contribute to the orderly development of adequate and effective health services.

(4) In making the determinations enumerated in subsection (3) the following shall be considered:

(a) the compatibility with needs shown in the appropriate state plan provided by those statutes relating to facilities, contained in sections 69-5301 through 69-5313 of this Title;

(b) the availability of facilities or services which may serve as alternates or substitutes;

(c) the need for special equipment and services in the area;

(d) the possible economies and improvement in services to be anticipated from the operation of combined central services including, but not limited to, laboratory, research, radiology, pharmacy, laundry and purchasing;

(e) the adequacy of financial resources and sources of future revenues; and

(f) the availability of sufficient manpower in the several professional disciplines.

(5) An approved application for construction is valid for one (1) year from the date of issue, but may be extended by the department for a period of six (6) months.

(6) If the department disapproves an application for construction of a facility, it shall notify the applicant of its actions and afford the applicant an opportunity to request a hearing before the board of health and environmental sciences. When this hearing is desired, the applicant shall notify the department in writing within fifteen (15) days after the notice of disapproval is received. If the decision, after hearing, is adverse, the applicant may appeal to the district court as provided in section 82-4216, R.C.M. 1947."

Approved April 16, 1975.

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CHAPTER NO. 448

AN ACT TO PROVIDE FOR FISCAL REVIEW OF STATE GOVERNMENT; CREATING A LEGISLATIVE FINANCE COMMITTEE AND SPECIFYING ITS POWERS AND DUTIES; CREATING THE OFFICE OF LEGISLATIVE FISCAL ANALYST AND SPECIFYING DUTIES; REPEALING SECTIONS 43-1101 THROUGH 43-1108, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 43-1109 that reads as follows:

43-1109. Title and purpose of act. This act may be cited as "The Legislative Finance Act". Because the legislature is responsible for appropriating public funds, it must provide for fiscal analysis of state government to accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance.

Section 2. There is a new R.C.M. section numbered 43-1110 that reads as follows:

43-1110. Definitions. In this act:

(1) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

(2) "Committee" means the legislative finance committee created by this act.

(3) "Budget director" means the budget director appointed pursuant to section 79-1012, R.C.M. 1947.

Section 3. There is a new R.C.M. section numbered 43-1111 that reads as follows:

43-1111. Legislative finance committee and office of legislative fiscal analyst created. There is created a legislative finance committee which shall be a permanent joint committee of the legislature. There is created the office of legislative fiscal analyst. The legislative fiscal analyst shall direct the office in carrying out the provisions of this act.

Section 4. There is a new R.C.M. section numbered 43-1112 that reads as follows:

43-1112. Legislative finance committee — appointment and term of members — officers. The legislative finance committee consists of:

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(1) four (4) members of the senate finance and claims committee, appointed by the chairman; (2) two (2) members of the senate appointed, at large, by the committee on committees; (3) four (4) members of the house of representatives appropriation committee, appointed by the chairman; and (4) two (2) members of the house appointed, at large, by the speaker. These members shall be appointed before the end of the first regular session of the biennium. No more than three (3) members of each house, two (2) committee members and one (1) at large member, may be from the same political party.

A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the appropriate political party and appropriate committee as provided in this section by the remaining members of the committee to complete the unexpired term. Appointments are for two (2) years and a member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first. The committee shall elect one of its members as chairman and such other officers as it considers necessary. Members of the committee shall be reimbursed for expenses and paid compensation as provided by law for interim standing committees.

Section 5. There is a new R.C.M. section numbered 43-1113 that reads as follows:

43-1113. Powers and duties of the committee. The committee may: (1) Organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the chairman, to advise and consult with the legislative fiscal analyst;

(2) Employ the legislative fiscal analyst who shall serve at the pleasure of and be responsible to the committee, and the committee shall set his salary;

(3) Exercise the investigatory powers of a standing committee under Title 43, chapter 4, R.C.M. 1947.

Section 6. There is a new R.C.M. section numbered 43-1114 that reads as follows:

43-1114. Legislative fiscal analyst's duties. The legislative fiscal analyst shall: (1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including, but not limited to, investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) Estimate revenue from existing and proposed taxes;

(3) Analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) Make the reports and recommendations he deems desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature; and

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(5) Assist committees of the legislature, and individual legislators, in compiling and analyzing financial information.

Section 7. There is a new R.C.M. section numbered 43-1115 that reads as follows:

43-1115. Fiscal analysis information from state agencies. The legislative fiscal analyst has the authority to investigate and examine into the costs of state government activities and may examine the records, books, and files of any state agency, including confidential records of executive branch agencies. Every state agency shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation. In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(1) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(2) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; and

(3) by December 15, all amendments to the preliminary budget.

Section 8. There is a new R.C.M. section numbered 43-1116 that reads as follows:

43-1116. Appointment of fiscal analysis employees and consultants. The legislative fiscal analyst may employ, fix the salaries and define the duties of such staff and consultants as may be necessary, within the limits of his appropriation.

Section 9.**Funds transferred.** Any unexpended funds appropriated by House Bill No. 1128, Session Laws of 1974, and funds appropriated to the "Fiscal Analysis Program" in House Bill No. 286, Session Laws of 1975, are hereby transferred to the office of the legislative fiscal analyst to carry out the purposes of this act.

Section 10. **Repealer.** Sections 43-1101 through 43-1108, R.C.M. 1947, are repealed.

Section 11. **Effective date.** This act is effective on its passage and approval.

Approved April 16, 1975.

CHAPTER NO. 449

AN ACT PROVIDING FOR PREPAYMENT OF TAXES ON CERTAIN MAJOR NEW INDUSTRIAL FACILITIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 84-41-105 that reads as follows:

84-41-105. Tax prepayment — new industrial facilities. (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three (3) times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject to taxation as all other property similarly situated, during the first three (3) years and thereafter, except that one-fifth (1/5) of the amount prepaid shall be allowed as a credit against property taxes in each of the first five (5) years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility which will employ on an average annual basis at least one hundred (100) people in construction or operation of the facility, and which will create a substantial adverse impact on existing state, county, or municipal services.

Section 2. This act is effective on its passage and approval.

Approved April 16, 1975.

CHAPTER NO. 450

AN ACT CLARIFYING THE DISTINCTION BETWEEN MOBILE HOMES TAXED AS PERSONAL PROPERTY AND MOBILE HOMES TAXED AS IMPROVEMENTS; AMENDING SECTIONS 84-101, 84-6601, AND 84-6604, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-101, R.C.M. 1947, is amended to read as follows:

"**84-101. Definition of terms.** Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First—The term "property" includes moneys, credits, bonds, stocks,

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franchises, and all other matters and things real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Second—The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, subject to the provisions of section 84-5401, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all right and privileges appertaining thereto.

3. Improvements.

Third—The term "improvements" includes all buildings, structures, fixtures, fences, and improvements, including mobile homes *and house trailers* situated upon, erected upon or affixed to land *when the department of revenue or its agent determines that the permanency of location of the mobile home has been established and for this purpose any mobile home is presumed to be an improvement to real property. If the mobile home or house trailer is an improvement located on land not owned by the owner of such improvement, the improvement shall be assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.*

Fourth—The term "personal property" includes everything which is the subject of ownership, not included within the meaning of the term "real estate" and "improvements."

Fifth—The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term "credit" means those solvent debts, secured or unsecured, owing to a person.

Seventh—The term "mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto."

Section 2. Section 84-6601, R.C.M. 1947, is amended to read as follows:

"**84-6601. Definitions.** As used in this act:

(1) "Mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

(2) "House trailer" means *a form of housing designed to be moved from one place to another by an independent power connected thereto, which is either eight (8) feet wide or less or thirty-two (32) feet long or less.*

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(3) "Dealer" means a person engaged in the distribution or sale of mobile homes."

Section 3. Section 84-6604, R.C.M. 1947, is amended to read as follows:

"**84-6604. Penalty for failure to display or produce declaration, sticker or receipt.** (1) Whoever makes a false or fraudulent declaration of destination, or, when required, fails to execute a declaration of destination or fails to produce a declaration of destination or tax paid receipt, if a tax paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine of not more than five hundred dollars ($500), or both.

(2) Whoever fails to display a property tax paid sticker or to produce a property tax paid receipt from fifteen (15) days after the due date for personal property taxes of one (1) year to the due date for personal property taxes of the next year *when the display of a tax paid receipt is required, commits* a misdemeanor punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment. *The sticker and receipt are not required for mobile homes which are classified as improvements to land.*"

Approved April 16, 1975.

CHAPTER NO. 451

AN ACT AMENDING SECTION 41-1605, R.C.M. 1947, AUTHORIZING THE COMMISSIONER OF LABOR TO INVESTIGATE LABOR VIOLATIONS AND INSTITUTE PROCEEDINGS TO ENFORCE LABOR LAWS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-1605, R.C.M. 1947, is amended to read as follows:

"**41-1605. Duties of department.** *(1)* The department of labor and industry shall be charged with the duty of enforcing all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, all laws relating to child labor regulating the employment of children in any manner, and to administer the laws of the state relating to free employment offices, *and all state labor laws enacted by legislation.*

(2) In discharging the duties imposed upon the department of labor and industry, the commissioner of labor and industry or his authorized representatives may administer oaths, examine witnesses under oath,

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take depositions or cause same to be taken, deputize any citizen eighteen (18) years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts. The commissioner of labor and industry may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment. Nothing herein contained shall in any manner confer upon the commissioner of labor and industry the authority to interfere in any manner with the conduct of the matters under the control of the workmen's compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state of Montana pertaining to the affairs of the workmen's compensation division, nor with the enforcement of the safety provisions of the Workmen's Compensation Act. Nothing in this act applies to labor violations preempted by federal law or regulation."

Section 2. This act is effective on passage and approval.

Approved April 16, 1975.

CHAPTER NO. 452

AN ACT TO AMEND THE STATUTE PERTAINING TO URBAN RENEWAL AREA FINANCING TO PROVIDE FOR THE ANNEXATION OR OTHER INCLUSION OF THE URBAN RENEWAL AREA IN DIFFERENT TAXING JURISDICTIONS; TO PROVIDE THAT THE ENTIRE TAXABLE VALUE OF THE URBAN RENEWAL AREA MUST BEAR THE BURDEN OF BONDED INDEBTEDNESS OF ALL TAXING JURISDICTIONS WITHIN WHICH IT LIES; TO LIMIT THE APPLICATION OF TAX LEVIES TO THE ACTUAL TAXABLE VALUE OF THE URBAN RENEWAL AREA UNTIL THE ACTUAL VALUE EXCEEDS THE TAXABLE VALUE OF THE LAST TAX YEAR PRIOR TO THE ESTABLISHMENT OF THE URBAN RENEWAL AREA; TO PROVIDE THAT TAX LEVIES SHALL APPLY AGAINST THE ACTUAL VALUE OF THE URBAN RENEWAL AREA AFTER ALL URBAN RENEWAL BONDS AND OTHER DEBTS HAVE BEEN RETIRED; TO BROADEN THE USES OF FUNDS GENERATED BY BONDS; TO AMEND THE DUTIES OF THE COUNTY TREASURER ACCORDINGLY; AND AMENDING SECTIONS 11-3921, 11-3925, AND 16-2601, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3921, R.C.M. 1947, is amended to read as follows:

"**11-3921. Allocation of taxes.** *(1) Any urban renewal plan, as defined in section 11-3901, may contain a provision or be amended to contain a provision providing that taxes levied on taxable property in an urban renewal area each year by or for the benefit of the state, any city, county,*

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or other political subdivisions for which taxes are levied, (hereafter referred to as taxing bodies) shall be allocated, after the effective date of such provision as provided in subsections (3) and (4) of this section.

(2) For the purposes of this section, (a) "prior assessed value" means the assessed value of the taxable property in the urban renewal area as shown on the assessment roll last equalized prior to the effective date of the urban renewal plan; notwithstanding the provisions of this act, any increase resulting from a comprehensive revaluation of all property within the county may be applied to the property for the purpose of determining the "prior assessed value";

(b) the word "taxes" includes, but is not limited to, all levies on an ad valorem basis upon land or real property.

(3) The portion of taxes produced by levies for a taxing body upon the total sum of the prior assessed value of the taxable property in the urban renewal area shall be allocated and paid into the funds of the taxing body like taxes paid by or for the taxing body on all other property. For the purpose of allocating taxes levied by a taxing body that did not include the urban renewal area on the effective date of the provision allocating the taxes but to which the urban renewal area has since been annexed or otherwise included, the assessment roll of the county last equalized prior to the effective date of the provision shall be used in determining the prior assessed value.

(4) The portion of taxes levied by such taxing body each year in excess of the amount levied under subsection (3) shall be paid by the county treasurer into a special fund held by the city treasurer to pay the principal and interest on bonds issued under authority of section 11-3910, except that taxes for the payment of all bonds and interest of each taxing body must be levied against all taxable property within the taxing body without limitation by the provisions of this subsection. Until the actual assessed valuation of all property in the urban renewal area exceeds the prior assessed value of all taxable property within such area, the actual assessed value of all property shall be used for taxation purposes.

(5) The portion of taxes allocated in subsection (4) above, and the special fund into which they are paid, may be pledged by a municipality for the payment of the principal and interest on bonds issued under the authority of section 11-3910, or bonded indebtedness, incurred by a municipality to refinance in whole or in part, the urban renewal project. Prior to the sale of any bonds, there shall be (a) an election under sections 11-2308 and 11-2309 approving such sale, or (b) a petition for the sale signed by the owners of record of at least fifty-one percent (51%) of the land within the urban renewal district.

(6) After all bonds and interest have been paid, all monies received from taxes upon property within the urban renewal area shall be allocated as taxes on all other property."

Section 2. Section 11-3925, R.C.M. 1947, is amended to read as follows:

"11-3925. Use of funds generated by bonds. Money generated by

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the sale of bonds for which funds are allocated pursuant to section 11-3921 may be used by a city only for improvement or construction of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots, sewers, waterlines, waterways, *land acquisition, demolition, and removal of structures, relocation of occupants, or improvements. All bonds financed must be sold within five (5) years after the adoption of the original urban renewal plan prior to the adoption of any amendment.*"

Section 3. Section 16-2601, R.C.M. 1947, is amended to read as follows:

"**16-2601. Duties of county treasurer.** The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;

2. Keep an account of the receipt and expenditures of all such moneys in books provided for the purpose, in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;

3. So keep his books that the amount received and paid out on account of separate funds or specific appropriations is exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;

4. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county clerk;

5. Disburse the county moneys only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law;

6. Keep all school moneys in a separate fund, and keep a separate account of their disbursement to the several school districts which are entitled to receive them, according to the apportionment of the county superintendent of common schools;

7. Notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school moneys belonging to any other fund subject to apportionment, *or as otherwise provided by law*;

8. Pay all warrants drawn on county or district school moneys, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders;

9. Make, annually, during the month of September of each year, a financial report for the last preceding year ending with August 31st, to the county superintendent in such form as may be required by him."

Approved April 16, 1975.

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CHAPTER NO. 453

AN ACT TO ESTABLISH A PROGRAM PROVIDING LIFESAVING TREATMENT FOR CHRONIC RENAL DISEASE, REQUIRING STANDARDS FOR DETERMINING ELIGIBILITY TO BE ESTABLISHED AND APPROPRIATING TWO HUNDRED THOUSAND DOLLARS ($200,000) FROM THE GENERAL FUND FOR THE BIENNIUM ENDING JUNE 30, 1977, TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR SUCH PURPOSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-2501 that reads as follows:

71-2501. Purpose. It is the intent of the legislature to insure the establishment of a program for the care and treatment of persons suffering from chronic renal diseases, who require lifesaving care and treatment for such renal diseases, but who are unable to pay for the services on a continuing basis.

Section 2. There is a new R.C.M. section numbered 71-2502 that reads as follows:

71-2502. Establishment of program. The department of social and rehabilitation services shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for such diseases, including the rental or purchase of home dialysis equipment and supplies. The department shall establish standards for determining eligibility for care and treatment under this program in order that treatment shall be provided to those who are financially unable to obtain such treatment without causing severe economic imbalance in the family economic unit. Such standards shall be established without reference to maximum or minimum income levels.

Section 3. There is appropriated from the general fund of the state of Montana the sum of two hundred thousand dollars ($200,000), for the biennium ending June 30, 1977, to the department of social and rehabilitation services for the purposes of a program to provide financial assistance in obtaining medical, nursing, pharmaceutical, and technical services in the treatment of chronic renal diseases.

Approved April 16, 1975.

CHAPTER NO. 454

AN ACT TO ELIMINATE THE BUDGET LIMITATION OF 112% FOR SCHOOL DISTRICTS; AMENDING SECTION 75-6923, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6923, R.C.M. 1947, is amended to read as follows:

"**75-6923. Additional levy for general fund and election for authorization to impose.** The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

(1) building, altering, repairing or enlarging any school house of the district;

(2) furnishing additional school facilities for the district;

(3) acquisition of land for the district;

(4) proper maintenance and operation of the school programs of the district.

However, when the trustees adopt a total general fund budget which exceeds one hundred ten percent (110%) of the general fund budget for the preceding year, they shall file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for increasing the budget.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing to the electors who are qualified, under section 75-6410, to vote upon such proposition except that the Twin Bridges high school district may increase its general fund budget as established by section 75-6905, R.C.M. 1947, by the amount of tuition paid to the district the previous year under section 75-6319, R.C.M. 1947. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

"☐ FOR the additional levy.

☐ AGAINST the additional levy."

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If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one (1) school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year."

Section 2. **Effective date.** This act is effective upon its passage and approval.

Approved April 16, 1975.

CHAPTER NO. 455

AN ACT GENERALLY REVISING THE WATER POLLUTION CONTROL LAWS TO CONFORM WITH FEDERAL REQUIREMENTS, TO IMPROVE ENFORCEMENT PROCEDURES, AND TO PROVIDE FOR USER CHARGES FOR INDUSTRIAL AND OTHER USERS OF PUBLIC SEWAGE TREATMENT SYSTEMS; AMENDING SECTIONS 16-4412, 16-4526, 69-4801, 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1, 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825, AND 69-4826, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4801, R.C.M. 1947, is amended to read as follows:

"**69-4801. Public policy of the state.** (1) It is the public policy of this state to:

(a) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(b) provide a comprehensive program for the prevention, abatement, and control of water pollution.

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream *as long as the minimum*

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treatment requirements established under this chapter are met. "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from *the reasonable operation of* dams at the effective date of this act are "natural.""

Section 2. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"**69-4802. Definitions.** Unless the context requires otherwise in this chapter:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, *grease,* tar, *heat,* chemicals, dead animals, sediment, *wrecked or discarded equipment, radioactive materials, solid waste,* and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health;

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor; or discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is *authorized under the pollution discharge permit rules of the board* is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within

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the irrigation system and the waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607;

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605;

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constitutents which are discharged into state waters."

Section 3. Section 69-4806, R.C.M. 1947, is amended to read as follows:

"**69-4806. Pollution unlawful — permits.** It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R.C.M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges to any state waters; or

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes to any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters; or

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(3) violate any limitation imposed by a current permit."

Section 4. Section 69-4807.1, R.C.M. 1947, is amended to read as follows:

"**69-4807.1. Denial, modification, suspension, and revocation of permit — notice — hearing — effective date.** (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 [69-4820] of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board. *This subsection does not apply to any modification made in permit conditions at the time of reissuance but only to those modifications made in existing permits during their terms.*

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 [69-4820] of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise."

Section 5. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

"**69-4808.2. Duties of board.** (1) The board shall:

(a) Establish and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, and:

(i) The classifications, standards, and rules which have been adopted by the state water pollution control council under section 69-4813 are, without necessity of a hearing, initially adopted by the board.

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(ii) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 69-4813.

(iii) The board shall require that any state waters, whose existing quality is *higher* than the established *water quality* standards, be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(iv) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1) (c) (iii), to provide the degree of waste treatment necessary to maintain that existing high water quality.

(d) Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(e) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

(f) Adopt rules governing the issuance, denial, modification, or revocation of permits, and:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, if the department *insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.*

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

(g) Hold hearings necessary for the proper administration of this chapter *or, in the case of permit issuance hearings, delegate this function to the department.*

(h) Adopt rules for the administration of this chapter.

(i) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section

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69-4802 *(18), adopt toxic effluent standards and prohibitions,* and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 6. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"**69-4809.1. Duties of department.** (1) The department shall:

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

(b) Examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them.

(g) Take such actions as are authorized or required under section 69-4820.1 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted."

Section 7. Section 69-4809.2, R.C.M. 1947, is amended to read as follows:

"**69-4809.2. Power to inspect and monitor — authority.** (1) In order to carry out the objectives of this act and to effectively monitor the discharge of sewage, industrial wastes and other wastes into state waters, the department may require the owner or operator of any point source, *or the owner or operator of any facility that discharges into a municipal sewer system and to which pretreatment standards, promulgated under this chapter apply,* to:

(a) establish and maintain records;

(b) make reports;

(c) install, use and maintain monitoring equipment or methods, including biological monitoring techniques;

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(d) sample effluents using specified monitoring methods at designated locations and intervals;

(e) provide other information as may be reasonably required by the department.

(2) The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property *to:*

(a) investigate conditions relating to pollution of state waters or violations of permit conditions;

(b) have access to and copy any records required under this act*;*

(c) inspect any monitoring equipment or method required under subsection (1)(c)*;* and

(d) sample any effluents which the owner or operator of such source is required to sample under that subsection.

(3) Any records, reports, or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards."

Section 8. Section 69-4820, R.C.M. 1947, is amended to read as follows:

"69-4820. Violation of chapter or rule — notice to violator — hearing before board — notice, procedure, order, rehearing. (1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it *may* have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than thirty (30) days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall,

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if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(6) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under section 69-4823."

Section 9. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"**69-4820.1. Additional enforcement remedies.** (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action *on its own initiative* to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947;

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) *In furtherance of subsection (1) of this section, any* person violating *any* condition, limitation, standard or other requirement established pursuant to this *chapter* may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be personally served by an authorized *representative* of the department.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean,

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in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer."

Section 10. Section 69-4822, R.C.M. 1947, is amended to read as follows:

"**69-4822. Confidentiality of records.** Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, *reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein.* Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution, if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section."

Section 11. Section 69-4823, R.C.M. 1947, is amended to read as follows:

"**69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order — purpose and construction of chapter.** (1) A person who violates *this chapter or* a rule, permit, effluent standard, or order issued under the provisions of this act shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000). Each day of violation constitutes a separate *violation.*

(2) A person who willfully *or negligently* violates section 69-4806, R.C.M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars ($25,000) per day of violation or by imprisonment for not more than one (1) year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars ($50,000) per day of violation, or imprisonment for not more than two (2) years, or both.

(3) Action under subsection (1) of this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy. The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person

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as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) Fines collected shall be deposited to the state general fund.

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment for not more than six (6) months, or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants."

Section 12. Section 69-4825, R.C.M. 1947, is amended to read as follows:

"**69-4825. Injunctions.** The department may bring an action for an injunction against the continuation of an alleged violation of *the terms or conditions of* a permit *issued* by the department *or any rule or effluent standard promulgated under this chapter* or against a person who fails to comply with an emergency order issued by the department under section 69-4824 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 13. Section 69-4826, R.C.M. 1947, is amended to read as follows:

"**69-4826. Action by other parties.** A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest. *If a violation is established by the investigation of the department, appropriate enforcement action shall be taken.*"

Section 14. There is a new R.C.M. section numbered 69-4808.4 that reads as follows:

69-4808.4. Rates and charges to meet costs of treatment works — use of funds — enforcement. (1) A municipality or other entities operating a sewage system may adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality or other entities operating a sewage system.

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(2) A municipality or other entities operating a sewage system may require industrial users of its treatment works to pay to the municipality or other entities operating a sewage system that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The department of health and environmental sciences may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

(3) A municipality or other entities operating a sewage system may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(a) repayment to applicable agencies of government of any grants or loans made to the municipality or other entities operating a sewage system for construction of the treatment works; and

(b) future expansion and reconstruction of the treatment works; and

(c) other municipal purposes.

(4) A municipality or other entities operating sewage systems shall keep records, financial statements and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements and books, audit them, or cause them to be audited, at such intervals as deemed necessary.

(5) In the event a municipality or other entities operating sewage systems fails, neglects or refuses when required by the department to adopt the system of charges and rates authorized by this section, the board may adopt a system of charges and rates as provided for in subsection (1) of this section and collect, administer and apply such revenues for the purposes of subsection (3) of this section.

(6) In lieu of proceeding in the manner set forth in subsection (5) of this section, the department may institute proceedings at law or in equity to enforce compliance with, or restrain violations of this section.

Section 15. There is a new R.C.M. section numbered 69-4808.5 that reads as follows:

69-4808.5. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entities operating sewage systems or, if applicable, the board shall consider the strength, volume, types and delivery flow rate characteristics of the waste; the nature, location and type of treatment works; the receiving waters; and such other factors as deemed necessary.

Section 16. Section 16-4412, R.C.M. 1947, is amended to read as follows:

"16-4412. Federal funds for local public works programs. The

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board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by the Congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal goverment any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board has applied pursuant to this section, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

Section 17. Section 16-4526, R.C.M. 1947, is amended to read as follows:

"**16-4526. Rate to pay operating expenses.** The board of directors in the furnishing of water, sewer service, other services and facilities, shall fix such rate, fee, toll, rent or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

Notwithstanding any other section of this chapter, or limitation imposed therein, and when the board of directors has applied for and received from the federal government any moneys for the construction, operation and maintenance of treatment services and works, the board of directors may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance and replacement, and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial users' wastes."

Approved April 16, 1975.

CHAPTER NO. 456

AN ACT TO AMEND SECTIONS 69-1601 THROUGH 69-1603, 69-1606, AND 69-1607, R.C.M. 1947, RELATING TO QUALIFICATIONS AND LICENSING OF HOISTING ENGINEERS; AND REPEALING SECTION 69-1604, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1601, R.C.M. 1947, is amended to read as follows:

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"**69-1601. Operators of hoisting engines must procure licenses.** (1) It *is* unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel *or material* in industrial operations or on construction projects, without first obtaining a license therefor from the *division* as herein provided. Except that in emergencies *under* section 69-1517 relating to the employment of unlicensed engineers, *the provisions of that section* shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel *or material* in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel *or material* in industrial operations or on construction projects.

(4) The provisions of this section shall not apply to hoists and cranes defined in section 69-1601.1.

(5) The provisions of this act shall not apply to forklifts, front-end and rear-end loaders."

Section 2. There is a new R.C.M. section numbered 69-1601.1 that reads as follows:

69-1601.1. Crane and hoist licenses. (1) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above six (6) tons and a boom length of more than twenty-five (25) feet without first obtaining a license from the division. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use. In emergencies, section 69-1517 shall apply to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) An applicant for a first-class hoisting engineer's license shall have: (i) no less than three (3) years' experience operating equipment requiring a second-class hoisting engineer's license, or four (4) years' experience operating hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination, (ii) passed his eighteenth birthday, and (iii) passed a written test prescribed by the division. An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of six (6) tons or a boom length of twenty-five (25) feet up to equipment with a rating of fifteen (15) tons and a boom length of sixty (60) feet.

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(d) Applicants for a second-class hoisting engineer's license shall: (i) have no less than two (2) years' experience in actual operation of hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination, (ii) successfully pass a written examination prescribed by the division, and (iii) have passed their eighteenth birthday. An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license applies to truck crane oilers only.

(f) Applicants for a third-class hoisting engineer's license shall successfully pass a written test prescribed by the division, and shall be at least eighteen (18) years old, before receiving this license.

(3) The division shall reexamine each licensed engineer or operator every five (5) years during the anniversary month of his license, if the licensee has not worked at the trade for five (5) years.

Section 3. Section 69-1602, R.C.M. 1947, is amended to read as follows:

"**69-1602. Application and fee for license— renewal and revocation of license.** Application for licenses shall be made to the *division* in the same manner, and the same fee shall be charged as required by law for obtaining a license to operate steam engines, boilers, and *steam-driven machinery, under chapter 15 of this Title. The* license *is valid* for one *(1)* year from the date of issuance, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, *or steam-driven machinery. The division may* revoke any license issued under this act for any of the reasons for which the *division may* revoke a license to operate steam engines, boilers, *or steam-driven machinery.*"

Section 4. Section 69-1603, R.C.M. 1947, is amended to read as follows:

"**69-1603. Scope of license—exemptions.** (1) A license granted under this act *entitles* the holder to operate any of the machinery named in section 69-1601 *and section 69-1601.1*, and the license shall specify *that* machinery, but no license issued shall authorize or qualify the person to whom issued to operate a boiler, steam engine, *steam-driven machinery, or air compressor.*

(2) *This* act shall not apply to hoisting engines, *air compressors,* or elevators under federal control or to operating elevators in completed private or public buildings."

Section 5. Section 69-1606, R.C.M. 1947, is amended to read as follows:

"**69-1606. Renewal of application by rejected candidate.** Any person who has applied for a license under this act and has been rejected, may renew his application for *a* license within the time and in the manner prescribed in sections 69-1513 and 69-1514."

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Section 6. There is a new R.C.M. section numbered 69-1608 that reads as follows:

69-1608. Crane inspector. The division shall employ at least one (1) crane inspector. He shall hold a first-class hoisting engineer's license under this act for one (1) year and have three (3) years' experience operating cranes.

Section 7. Section 69-1607, R.C.M. 1947, is amended to read as follows:

"**69-1607. Penalty for operating machinery without license.** Every person who operates any of the engines and machinery named in section 69-1601 for which a license is required, without first obtaining a license as required by the provisions of this act, and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate the same, or any person who violates any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars *($500)*, or by imprisonment in the county jail not more than six *(6)* months, or by both such fine and imprisonment."

Section 8. There is a new R.C.M. section numbered 69-1609 that reads as follows:

69-1609. Grandfather clause. A person holding a valid license on the effective date of this act, may renew it for two (2) years under the provisions of statutes in effect at the time of licensing. Thereafter, all applicants for new licenses, renewal licenses or lapsed licenses shall comply with this act.

Section 9. **Repealer.** Section 69-1604, R.C.M. 1947, is repealed.

Approved April 16, 1975.

CHAPTER NO. 457

AN ACT AMENDING SECTIONS 84-437.2 AND 84-437.6, R.C.M. 1947, TO DEFINE AGRICULTURAL LANDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-437.2, R.C.M. 1947, is amended to read as follows:

"**84-437.2. Eligibility of land for valuation as agricultural.** *(1)* Land which is actively devoted to agricultural use shall be eligible for valuation, assessment and taxation as herein provided each year it meets *either of* the following qualifications:

(a) The area of such land is not less than five (5) contiguous acres when measured in accordance with provisions of section 84-437.6, R.C.M. 1947,

and it has been actively devoted to agriculture *during the last growing season* and it continues to be *actively* devoted to agricultural use which means;

(i) it is used to produce *field* crops including, but not limited to, grains, feed crops, fruits, vegetables; or

(ii) it is used for grazing; or

(iii) it is in a crop-land retirement program; or

(b) It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owners' annual gross income *regardless of the number of contiguous acres in the ownership.*

(2) Land shall not be classified or valued as agricultural if it is subdivided with stated restrictions prohibiting its use for agricultural purposes.

(3) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation."

Section 2. Section 84-437.6, R.C.M. 1947, is amended to read as follows:

"**84-437.6. Improvements on agricultural land.** In determining the total area of land actively devoted to agricultural use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities."

Approved April 16, 1975.

CHAPTER NO. 458

AN ACT AMENDING SECTION 79-2315, R.C.M. 1947, TO REQUIRE THE ATTORNEY GENERAL AND COUNTY ATTORNEYS IN PROSECUTIONS RESULTING FROM LEGISLATIVE AUDITS, TO TURN OVER INVESTIGATIVE MATERIALS TO THE APPROPRIATE DISCIPLINARY AUTHORITY IN CASES OF SUSPECTED UNETHICAL CONDUCT BY PROFESSIONAL PERSONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-2315, R.C.M. 1947, is amended to read as follows:

"**79-2315. Attorney general shall prosecute.** The attorney general shall conduct on behalf of the state, all prosecutions for public offenses disclosed by an audit of a state agency performed by the legislative auditor. If the attorney general shall decline such prosecution or shall fail to commence action on a public offense within a reasonable time the

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county attorney of the appropriate county shall conduct on behalf of the state such prosecution.

In any action taken by the attorney general or any county attorney under this section, wherein any professional person in the state of Montana is charged, or may have engaged in unethical conduct, all records, or certified copies of such records, including investigative materials, shall be turned over to the appropriate disciplinary authority of his or her profession immediately upon completion of the action."

Approved April 16, 1975.

CHAPTER NO. 459

AN ACT AMENDING SECTIONS 69-2105 AND 69-2123, R.C.M. 1947, TO STANDARDIZE THE DEFINITIONS OF MOBILE HOMES AND RECREATIONAL VEHICLES COVERED BY THE BUILDING AND MOBILE HOME STANDARDS OF THE STATE OF MONTANA AND CLARIFYING WHAT HOMES AND VEHICLES ARE INCLUDED UNDER COMPLIANCE WITH THOSE STANDARDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2105, R.C.M. 1947, is amended to read as follows:

"**69-2105. Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (12) of this section.

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Department" means the department of administration provided for in Title 82A, chapter 2.

(4) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(5) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

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(6) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(8) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(9) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) "State building code" means the state building code provided for in section 69-2111 or any portion of the code of limited application, and any of its modifications or amendments.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension of the jurisdictional area to include all or part of the area within four and one-half (4 ½) miles of the corporate limits of a municipality, measured in a straight line in a horizontal plane.

(13) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

(14) "Mobile home" means *anything defined as a mobile home in the edition of National Fire Protection Association (NFPA) No. 501B or American National Standards Institute (ANSI) A119.1 most recently adopted by the state in accordance with section 69-2122.*

(15) "Recreational vehicle" means *anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with section 69-2122.*"

Section 2. Section 69-2123, R.C.M. 1947, is amended to read as follows:

"**69-2123. Compliance with the department's rules.** No person, firm or corporation may manufacture, sell, or offer for sale any *new* mobile home or recreational vehicle unless such mobile home or recreational vehicle, its components, systems and appliances have been constructed and assembled in accordance with the standards herein defined. Any mobile home or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this chapter. All mobile home or

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recreational vehicle units thus approved shall be acceptable as meeting the requirements of this chapter throughout the state of Montana without further inspection or fees except for zoning, utility connections and foundation permits required by local ordinance."

Approved April 16, 1975.

CHAPTER NO. 460

AN ACT TO PROVIDE FOR A PROGRAM PLANNING AND BUDGETING SYSTEM; TO SPECIFY INFORMATION TO BE CONTAINED IN THE PROPOSED BUDGET; PROVIDING FOR THE SUBMISSION OF VARIANCE REPORTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 79-1012.1 that reads as follows:

79-1012.1. Definitions. As used in this chapter:

(1) "effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained;

(2) "program" means a combination of resources and activities designed to achieve an objective or objectives;

(3) "program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, etc.;

(4) "program size indicator" means a measure to indicate the magnitude of a program;

(5) "priority listing" means a ranking of proposed expenditures in order of importance.

Section 2. There is a new R.C.M. section numbered 79-1012.2 that reads as follows:

79-1012.2. Program planning and budgeting system. (1) The budget director shall implement a program planning and budgeting system as provided in this act for at least one program in representative agencies of state government service such as planning, human service delivery, licensing and regulation, and other programs as determined by the budget director.

Section 3. There is a new R.C.M. section numbered 79-1012.3 that reads as follows:

79-1012.3. Program budget. The biennial budget under this act shall include a departmental analysis summarizing past and proposed spending plans by program and the means of financing the proposed plan. Information presented shall include the following:

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(1) A statement of departmental and program objectives, effectiveness measures and program size indicators;

(2) At least three (3) alternative funding levels for each program with effectiveness measures and program size indicators detailed for each alternative funding level. The first funding level shall not exceed eighty percent (80%) of that level authorized by the legislature for the present fiscal year;

(3) A departmental priority listing encompassing all alternative funding levels;

(4) A detailed narrative which shall include at least:

(a) A description of the kinds of activities carried out or unusual technologies employed;

(b) A statement of key policies pursued;

(c) A description of major external trends affecting the program;

(d) An evaluation of how effective the program has been in the past and the apparent reasons for the level of success attained;

(e) A description of possible events that could result in significant variations in the size, operation or effectiveness of the program;

(f) An explanation of the rationale used in determining the priority listing.

(5) Actual disbursements for the past two (2) fiscal years, the estimated disbursements for the fiscal year in progress, and the governor's recommendations for the ensuing biennium by program and disbursement category;

(6) A statement containing further recommendations of the governor as appropriate.

Section 4. There is a new R.C.M. section numbered 79-1015.1 that reads as follows:

79-1015.1. Long-range building program. The executive budget for all state agencies shall include detailed recommendations for the state long-range building program presented in a priority listing. Each recommendation shall be presented by department, institution, agency or branch by funding source, with a description of each proposed project, an explanation of the problem to be addressed by the proposed project, alternative methods of addressing the problem, the rationale for the selection of a particular alternative and a projection of increased operating costs incident to the project for the next three (3) bienniums.

Section 5. There is a new R.C.M. section numbered 79-1020 that reads as follows:

79-1020. Variance reports. Annually by January 1 the governor shall submit to the members of the legislature a variance report for the immediate past fiscal year which shall detail variances between the

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expenditures, revenues, program size indicators, effectiveness measures and priorities expressed in the executive budget and those actually realized. The report should contain a detailed narrative explaining the reasons for all significant variances.

Approved April 16, 1975.

CHAPTER NO. 461

AN ACT TO BE KNOWN AS THE HOUSING ACT OF 1975; CREATING A BOARD OF HOUSING AND PROVIDING FOR ITS POWERS AND DUTIES RELATING TO FINANCING TO ASSIST PRIVATE ENTERPRISE AND GOVERNMENTAL AGENCIES TO MEET HOUSING NEEDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 35-501 that reads as follows:

35-501. Title. This act shall be known and may be cited as the "Housing Act of 1975".

Section 2. There is a new R.C.M. section numbered 35-502 that reads as follows:

35-502. Legislative declaration. The legislature finds and declares that there is a shortage in Montana of decent, safe, and sanitary housing which is within the financial capabilities of lower income persons and families. In order to alleviate the high cost of housing for these persons, the legislature believes that it is essential that additional public moneys be made available, through the issuance of revenue bonds, to assist both private enterprise and governmental agencies in meeting critical housing needs.

Section 3. There is a new R.C.M. section numbered 35-503 that reads as follows:

35-503. Definitions. As used in this act, unless the context requires otherwise: (1) "Board" means the board of housing created in section 82A-907, R.C.M. 1947.

(2) "Bond" means any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness issued by the board pursuant to this act.

(3) "Capital reserve account" means the capital reserve account provided for in section 35-523.

(4) "Department" means the department of community affairs provided for in Title 82A, chapter 9, R.C.M. 1947.

(5) "Federally insured mortgage" means a mortgage loan for land

development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality thereof, or a commitment by the United States or a governmental agency or instrumentalities thereof to insure such a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality thereof.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more thereof.

(8) "Housing development" means any work or undertaking financed, in whole or in part, under this act for the primary purpose of acquiring, constructing or rehabilitating dwelling accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable in connection therewith, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities as the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including, but not limited to:

(a) cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution and financing of the housing development and the finding of an eligible mortgagee or mortagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus and similar facilities related to the real property;

(g) cost of land improvements including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and if applicable, a limited profit housing sponsor;

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(j) an allowance established by the board for working capital and contingency reserves, and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) costs of other items, including tenant relocation, as the board determines to be reasonable and necessary for the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsor, nonprofit corporation, or other legal entities or any combination thereof, that are:

(a) approved by the board;

(b) qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this act.

(11) "Lending institution" means any public or private entity or governmental agency, approved by the board, maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this act.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time the mortgage is acquired, which does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 14, chapter 2, R.C.M. 1947, or a nonprofit corporation formed under Title 15, chapter 23, R.C.M. 1947, restricted as to distribution of income and regulated as to rents, charges, rate of return and methods of operation as the board determines necessary, and whose articles of incorporation provide, in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization shall be used exclusively for housing development purposes and no part of the net income

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or net earnings of the organization shall inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain therefrom, or seeking to eliminate or minimize losses in any transactions therewith, except that the limitations shall apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families, with insufficient personal or family income who require assistance under this act, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families due to age or physical handicaps.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board.

Section 4. There is a new R.C.M. section numbered 82A-907, that reads as follows:

82A-907. Board of housing — composition — allocation — designation. (1) There is a board of housing.

(2) The board consists of: seven (7) members appointed by the governor as provided in section 82A-112, informed and experienced in housing, economics or finance.

(3) The board shall elect a chairman and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of section 82A-112.

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(5) The board is allocated to the department of community affairs for administrative purposes only as provided in section 82A-108.

(6) The department shall provide all necessary staff and services to the board and shall assess the board for reasonable costs.

Section 5. There is a new R.C.M. section numbered 35-504 that reads as follows:

35-504. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this act, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements and other instruments necessary or convenient for the exercise of its powers under this act;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons and any domestic or foreign partnership, corporation, association, or organization in carrying out this act;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development and management of housing developments, financed in whole or in part, by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this act, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises, and utilize or dispose of them in carrying out this act;

(9) acquire real or personal property or any right, interest or easement therein, by gift, purchase, transfer, foreclosure, lease or otherwise; hold, sell, assign, lease, encumber, mortgage or otherwise dispose thereof; hold, sell, assign or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract or other agreement; bid for and purchase property at any foreclosure or other sale, or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property, in any manner necessary or desirable to protect its interests and the holders of its bonds or notes, and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

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(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income, where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership and maintenance, where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 79, chapter 3, R.C.M. 1947, except all investment income from funds of the board, less the cost for investment as prescribed by law, shall be deposited in the housing finance account;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States, and may invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of such sale;

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes to the modification of the rate of interest, time and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred;

(17) procure insurance against any loss in connection with its mortgages and mortgage loans, and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds, and replace lost, destroyed or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means.

Section 6. There is a new R.C.M. section numbered 35-505 that reads as follows:

35-505. Financing programs of the board. (1) The board may:

(a) make loans to lending institutions under terms and conditions adopted by the board requiring the proceeds to be used by the lending institution for the making of mortgage loans for housing developments in the state for persons and families of lower income;

(b) invest in, purchase or make commitments to purchase, and take assignments from lending institutions, of notes, mortgages and other securities evidencing loans for the construction, rehabilitation, purchase, leasing or refinancing of housing developments for persons and families of lower income in this state, under terms and conditions adopted by the board;

(c) make, undertake commitments to make, and participate in the making of mortgage loans, including federally insured mortgage loans, and to make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the construction or rehabilitation of housing developments designed and planned for occupancy by persons and families of lower income in this state, under terms and conditions adopted by the board;

(d) make, undertake commitments to make, and participate in the making of loans to persons and families of lower income for housing development, including without limitation persons and families of lower income who are eligible or potentially eligible for federally insured loans, federal mortgages or other federal housing assistance, when the board determines that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions, and under terms and conditions adopted by the board.

(2) The board shall adopt rules respecting the regulation of borrowers, the admission of occupants in housing developments, the construction of ancillary facilities, and requirements or restrictions necessary to implement this act.

(3) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of housing sponsors and eligible recipients;

(b) approval, standards and regulation of lending institutions under this act;

(c) assessment, collection and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and security purchase programs;

(d) assessment and collection of fees and charges in connection with its technical, consultative, and project assistance activities;

(e) determination and regulation of mortgagor and lending institution and their use of funds under this chapter, sponsor and mortgagor equity definitions and limitations, and housing development costs;

(f) percentage of housing units or housing developments assisted under this act that are reserved for lower income persons and families, and which allows for an economic mixture of residents.

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(4) The board may require that loans made to or securities issued by lending institutions shall be additionally secured as to payment of principal and interest by a pledge of and a lien upon collateral security in amounts and consisting of obligations and securities as the board determines necessary to assure prompt payment of loans and interest. Collateral may be required to be lodged with a bank or trust company designated by the board as custodian, or the board may enter into an agreement with the lending institution requiring it to identify and maintain and service the collateral and the income therefrom solely in accordance with the agreement. A copy of each agreement and any revisions or supplements thereto shall be filed with the secretary of state, and no further filing or other action under the uniform commercial code or any other law shall be required to perfect the security interest of the board in the collateral or in any additions or substitutions. The lien and trust is binding from the time it is made, against all parties having claims of any kind in tort, contract, or otherwise against the lending institution.

Section 7. There is a new R.C.M. section numbered 35-506 that reads as follows:

35-506. Procedure prior to financing of housing developments. The board may finance housing developments under this act only when the board finds: (1) that there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons and families of lower income can afford within the general housing market area to be served by the proposed housing development;

(2) that private enterprise has not provided an adequate supply of decent, safe, and sanitary housing in the housing market area at rentals or prices which persons or families of lower income can afford, or provided sufficient mortgage financing for housing developments for occupancy by persons or families of lower income;

(3) that the housing sponsor undertaking the proposed housing development in this state will supply well planned, well designed housing and that such sponsors are financially responsible;

(4) that the housing development to be assisted under this act will be of public use and will provide a public benefit, taking into account the existence of local government comprehensive plans, housing and land use plans and regulations, areawide plans, and other public desires;

(5) that the housing development does not involve the construction of second homes. For purposes of this paragraph, "second home" means a home which would not qualify as the primary residence of the taxpayer for federal income tax purposes relating to capital gains on the sale or exchange of residential property; and

(6) that as to direct loans it is necessary to qualify for federal funds.

Section 8. There is a new R.C.M. section numbered 35-507 that reads as follows:

35-507. Supervision of housing sponsors. (1) The board may supervise housing sponsors of housing developments financed under this act as follows:

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(a) prescribe uniform systems of accounts and records for housing sponsors and require them to make reports and give answers to specific questions on forms and at times specified by the board;

(b) enter upon and inspect the housing development, and examine all books and records of the housing sponsor with respect to capitalization, income and other matters as specified by the board;

(c) supervise the operation and maintenance of any housing development and order repairs necessary to protect the public and the board's interest or the health, welfare, or safety of the occupants;

(d) determine standards for, and control resident selection by a housing sponsor;

(e) require any housing sponsor to pay to the board fees as it prescribes in connection with the examination, inspection, supervision, auditing, or other regulation of the housing sponsor;

(f) order any housing sponsor to do, or to refrain from doing, things necessary to comply with the provisions of law, the rules of the board, and the terms of any contract or agreement to which the housing sponsor is a party;

(g) regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption when added to any dividend or other distribution shall exceed in any one fiscal year ten percent (10%), or a lesser amount of the original face amount of any investment or equity of any housing sponsor, as determined by the board; and

(h) adopt rules specifying the categories of cost which shall be allowable in the construction or rehabilitation of a housing development.

(2) The board shall require any housing sponsor to certify the actual housing development costs prior to periodic payments or upon completion of the housing development, subject to audit and determination by the board. The board may accept, in lieu of any certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, as will enable the board to determine with reasonable accuracy the amount of housing development costs.

Section 9. There is a new R.C.M. section numbered 35-508 that reads as follows:

35-508. Bonds and notes. (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under section 35-516 and all other expenditures of the board incident to, and necessary or convenient to carry out this act.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, to refund any bonds by the issuance of new

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bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date and shall mature at times as the resolutions provide. A note shall not mature more than ten (10) years and a bond shall not mature more than fifty (50) years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate, or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices determined by the board.

(5) The total amount of notes and bonds outstanding at any one time may not exceed seventy-five million dollars ($75,000,000). The maximum rate of interest on bonds issued by the board may not exceed the maximum rate for revenue bonds issued by political subdivisions as provided in section 79-2602. The notes and bonds may not be sold for less than par.

Section 10. There is a new R.C.M. section numbered 35-509 that reads as follows:

35-509. Provision of bond resolutions. A resolution authorizing any notes, or bonds, or any issue thereof, may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or property of the board to secure the payment of the notes or bonds, or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including mortgages and obligations securing them, to secure the payment of the notes or bonds, or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from mortgages owned by the board and payment of principal of mortgages owned by the board;

(4) the setting aside of reserves of sinking funds in the hands of trustees, paying agents, and other depositories, and the regulation and disposition thereof;

(5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

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(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) limitations on the amount of moneys to be expended by the board for operating expenses of the board;

(9) vesting in a trustee property, rights, powers, and duties in trust as the board determines;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds, and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies shall not be inconsistent with the laws of the state and the other provisions of this act; and

(11) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

Section 11. There is a new R.C.M. section numbered 35-510 that reads as follows:

35-510. Validity of pledge. Any pledge made by the board shall be valid and binding from the time the pledge is made. The revenues, moneys or property pledged and thereafter received by the board shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

Section 12. There is a new R.C.M. section numbered 35-511 that reads as follows:

35-511. Personal liability. The board members and employees of the department are not personally liable or accountable by reason of the issuance of, or on any bond or note issued by the board.

Section 13. There is a new R.C.M. section numbered 35-512 that reads as follows:

35-512. Purchase of notes and bonds — cancellation. The board, subject to existing agreements with noteholders or bondholders, may, out of any funds available for that reason, purchase notes or bonds of the board, which shall thereupon be cancelled, at a price not exceeding:

(a) the current redemption price plus accrued interest to the next interest payment thereon, if the notes or bonds are then redeemable; or

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(b) the redemption price applicable on the first date after the purchase upon which the notes or bonds become subject to redemption plus accrued interest to that date, of the notes or bonds are not then redeemable.

Section 14. There is a new R.C.M. section numbered 35-513 that reads as follows:

35-513. Trust indenture. In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers, the custody, safeguarding and application of all moneys. The board may provide by a trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture of another depository, and for the method of disbursement, with safeguards and restrictions as it determines. All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenditures of the board.

Section 15. There is a new R.C.M. section numbered 35-514 that reads as follows:

35-514. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

Section 16. There is a new R.C.M. section numbered 35-515 that reads as follows:

35-515. Signatures of board members. In case any of the board members, whose signatures appear on notes or bonds or coupons, cease to be members before the delivery of the notes or bonds, their signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the members had remained in office until delivery.

Section 17. There is a new R.C.M. section numbered 35-516 that reads as follows:

35-516. Reserve funds and appropriations. (1) The board shall pay into the capital reserve account:

(a) any funds appropriated and made available by the state for the purpose of the account;

(b) any proceeds of sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) any other funds which may be available to the board for the purpose of the account from any other source.

(2) All funds held in the capital reserve account shall be used solely for the payment of the principal of bonds secured in whole or in part by the account or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the

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bonds or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account shall not be withdrawn at any time in an amount which reduces the amount of the account to less than the sum of minimum capital reserve requirements established for the account, except for the purpose of making, with respect to bonds secured in whole or in part by the account, payment, when due, of principal, interest, redemption premiums, and sinking fund payments for the payment of which other moneys pledged are not available. Any income or interest earned by, or incremental to, the capital reserve account due to its investment may be transferred to other accounts of the board to the extent it does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

(3) The board may not issue bonds secured in whole or in part by the capital reserve account, unless the board deposits in the account, from the proceeds of the bonds issued or from any other sources, an amount not less than the minimum capital reserve requirement for these bonds. For the purposes of this section, the term "minimum capital reserve requirement" means, as of any particular date of computation, an amount of money, as provided in the resolution or indenture of the board authorizing the bonds or notes, equal to not more than the greatest of the respective amounts for the current or any future fiscal year of the board of annual debt service on the bonds of the board secured in whole or in part by the account. The annual debt service for any fiscal year is the amount of money equal to the aggregate of all interest and principal payable on the bonds during the fiscal year, calculated on the assumption that all the bonds are paid at maturity. If any amount of the bonds is required to be redeemed on an earlier date by the operation of a sinking fund, then that amount is considered payable on those bonds during the year they are to be redeemed for the purposes of this calculation.

(4) In computing the amount of the capital reserve account, securities in which all or a portion of the account shall be invested shall be valued at par, or if purchased at less than par, at their cost to the board.

Section 18. There is a new R.C.M. section numbered 35-517 that reads as follows:

35-517. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall on or before September 1 in the year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature, the sum required to restore the capital reserve account to the sum of minimum capital reserve requirements. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board by the legislature under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, shall be repaid to the state's general fund without interest from available operating revenues of the

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board in excess of amounts required for the payment of bonds, notes or other obligations of the board, for maintenance of the capital reserve account and for operating expenses.

Section 19. There is a new R.C.M. section numbered 35-518 that reads as follows:

35-518. Refunding obligations — issuance. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding which have been issued under this chapter, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties and obligations of the board are governed by the appropriate provisions of this act which relate to the issuance of obligations.

Section 20. There is a new R.C.M. section numbered 35-519 that reads as follows:

35-519. Refunding obligations—sale. Refunding obligations issued as provided in section 35-518 may be sold or exchanged for outstanding obligations issued under this chapter. The proceeds may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest and any redemption premium on the obligations being refunded, and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 79, chapter 3, R.C.M. 1947.

Section 21. There is a new R.C.M. section numbered 35-520 that reads as follows:

35-520. Credit of state not pledged. Obligations issued under the provisions of this act do not constitute a debt or liability or obligation or a pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this act shall contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of, or the interest on, the obligation.

Section 22. There is a new R.C.M. section numbered 35-521 that reads as follows:

35-521. Annual audit. (1) There shall be an audit of the board's books and records at least once each fiscal year.

(2) The legislative auditor may conduct an audit at the request of the legislative audit committee.

Section 23. There is a new R.C.M. section numbered 35-522 that reads as follows:

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35-522. Tax exemption of bonds. Bonds, notes or other obligations issued by the board under this act, or by local housing authorities under Title 35, chapter 1, their transfer, and their income (including any profits made on their sale), shall be free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

Section 24. There is a new R.C.M. section numbered 35-523 that reads as follows:

35-523. Accounts of the board. (1) Housing finance account:

(a) there is a housing finance account in the bonds proceeds and insurance clearance fund provided for in section 79-410(6), R.C.M. 1947;

(b) all funds from the proceeds of bonds issued under this act, fees, and other moneys received by the board, moneys appropriated by the legislature for the use of the board in carrying out this act, and moneys made available from any other source for the use of the board shall be deposited in the housing finance account except where otherwise provided by law and except as necessary to maintain the capital reserve and revolving accounts;

(c) all funds deposited in the housing finance account are continuously appropriated to and may be expended by the board for the purposes authorized in this act.

(2) Capital reserve account:

(a) there is a capital reserve account in the sinking fund provided for in section 79-410(3), R.C.M. 1947;

(b) the capital reserve account consists of the aggregate of moneys retained by the board, under existing agreements with bondholders, as the minimum capital reserve requirement described in section 35-516 for each bond issue sold by the board.

(3) Revolving account:

(a) there is a revolving account in the revolving fund provided for in section 79-410(7), R.C.M. 1947;

(b) funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this act shall be deposited in the revolving account;

(c) funds expended by the board under this subsection shall be repaid by the board into the revolving account from the fees and charges collected under this act and from any other moneys available for such repayment in accordance with this act.

Section 25. There is a new R.C.M. section numbered 35-524 that reads as follows:

35-524. Pledge against impairment of contracts. In accordance with the constitutions of the United States and the state of Montana the state pledges that it will not, in any way, impair the obligations of any

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agreement between the board and the holders of notes and bonds issued by the board.

Section 26. There is a new R.C.M. section numbered 35-525 that reads as follows:

35-525. Meetings and acts of the board. (1) All meetings of the board are open to the public.

(2) All official acts of the board shall be in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board shall be in accordance with the Administrative Procedure Act.

Section 27. There is a new R.C.M. section numbered 35-526 that reads as follows:

35-526. Powers of the department. The department may:

(1) survey and investigate housing needs throughout the state and publish the results, and make recommendations to the governor and the legislature as to legislation and other measures necessary, desirable, or advisable to alleviate housing problems;

(2) maintain and disseminate information on available governmental housing assistance programs, eligibility and development requirements, and other similar information; and

(3) promote research and development in housing planning design, production, conservation, rehabilitation, and other matters relating to, or affecting the provision of decent, safe and sanitary housing in a suitable living environment.

Section 28. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 16, 1975.

CHAPTER NO. 462

AN ACT TO ESTABLISH A BICENTENNIAL STATEWIDE PROJECT SELECTION COMMISSION TO SELECT A SITE FOR A SINGLE, PERMANENT STATEWIDE PROJECT TO COMMEMORATE THE BICENTENNIAL ANNIVERSARY OF THE AMERICAN REVOLUTION; APPROPRIATING MATCHING FUNDS FOR SUCH STATEWIDE PROJECT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Commission established — composition — duties —**

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compensation — termination. (1) There is established a "Bicentennial Statewide Project Selection Commission" to select a Montana statewide project to commemorate the two hundred (200) year anniversary of the American revolution.

(2) The commission is composed of seven (7) members appointed by the governor and shall consist of one (1) attorney; one (1) member of the state board of trustees of the Montana historical society; one (1) state historical preservation officer or his representative; one (1) member of the state board of education; one (1) member of the Montana bicentennial administration advisory council; and two (2) members from the public at large. No more than four (4) members of the commission shall be from the same congressional district and no more than four (4) members shall be from the same political party.

(3) The commission shall solicit applications for a statewide project to commemorate the American revolution from interested communities and persons throughout the state, evaluate such applications, and select a site for a single, permanent statewide project.

(4) Commission members shall be compensated for their actual and necessary expenses while performing the duties of the commission and such expenses shall be paid from the funds of the Montana bicentennial administration.

(5) The commission shall cease to exist six (6) months after the passage and approval of this act or upon the completion of its designated task, whichever occurs first.

Section 2. There is appropriated the sum of two hundred fifty thousand dollars ($250,000) for the biennium ending June 30, 1977, from the general fund to the state bicentennial administration. The purpose of this appropriation is to select, develop, and build a single, permanent statewide project to commemorate the American revolution bicentennial. This appropriation is made subject to the receipt of federal, private, and/or local matching funds for the same purpose. If such matching funds do not become available, this appropriation shall revert.

Section 3. This act is effective upon its passage and approval.

Approved April 16, 1975.

CHAPTER NO. 463

AN ACT TO PROVIDE FOR A POLICY OF PRESERVING THE NATURAL OR EXISTING SHAPE, FORM AND COURSE OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR ORGANIZATIONS; AND IN SO DOING TO KEEP SOIL EROSION AND SEDIMENTATION TO A MINIMUM IN THE STATE OF MONTANA; AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 26-1510 that reads as follows:

26-1510. Short title. This act may be cited as "The Natural Streambed and Land Preservation Act of 1975".

Section 2. There is a new R.C.M. section numbered 26-1511 that reads as follows:

26-1511. Policy of state. It is the policy of the state of Montana that its natural rivers and streams, and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural, or existing state, and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana; and to protect the use of water for any useful or beneficial purpose as guaranteed by the constitution of the state of Montana.

Section 3. There is a new R.C.M. section numbered 26-1512 that reads as follows:

26-1512. Definitions. As used in this act:

(1) "Stream" means any natural perennial flowing stream, or river, its bed and immediate banks.

(2) "Person" means any natural person, corporation, firm, partnership, association or other legal entity, not covered under section 26-1502.

(3) "District" means a conservation district under Title 76, chapter 1, in which the project will take place; a grass conservation district, under Title 46, chapter 23, where no conservation district exists; or the board of county commissioners where a district does not exist.

(4) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(5) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of section 26-1511.

(6) "Applicant" means any person presenting notice of a project to the supervisors.

(7) "Department" means the Montana department of fish and game.

(8) "Team" means one (1) representative of the supervisors, one (1) representative of the department, and the applicant or his representative.

Section 4. There is a new R.C.M. section numbered 26-1513 that reads as follows:

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26-1513. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

Section 5. There is a new R.C.M. section numbered 26-1514 that reads as follows:

26-1514. Procedure for considering projects — team.

(1) The supervisors shall receive all notices of proposed projects within their district. They shall, within five (5) days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. They shall, within such period, send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

(2) If the supervisors determine that the proposal is for a project, the department shall, within five (5) days of receipt of such determination, notify the supervisors whether the department requests an on-site inspection by a team.

(3) The supervisors shall call a team together within twenty (20) days of receipt of the request of the department for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection. If the department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans.

(4) Each member of the team shall recommend, in writing, within fifty (50) days of date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations, and notify the applicant and team members within sixty (60) days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within five (5) days of receipt of the supervisors' decision, that an arbitration panel, as provided in section 26-1515 be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with any recommendation or alternative plan, by the supervisors to the applicant, the applicant, within fifteen (15) days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project prior to the expiration of this fifteen (15) day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed

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with the project upon the expiration of ten (10) days after receipt of the decision.

(8) The supervisors may extend the request of any team member, the time limits provided in section 26-1514 (4) and (5) where, in their determination, the time provided is not sufficient to carry out the purposes of this act. The time extension may not, in total, exceed one (1) year from date of application. The applicant shall be notified, within sixty (60) days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this act may take place without the written consent of the supervisors.

Section 6. There is a new R.C.M. section numbered 26-1515 that reads as follows:

26-1515. Arbitration panel — costs. (1) The arbitration panel shall consist of three (3) members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the policy set forth in section 26-1511.

(2) Cost of the arbitration panel, computed as for jurors' fees under section 25-401, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

Section 7. There is a new R.C.M. section numbered 26-1516 that reads as follows:

26-1516. Vested water rights preserved. This act shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

Section 8. There is a new R.C.M. section numbered 26-1517 that reads as follows:

26-1517. Emergencies — procedure. (1) The provisions of this act shall not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for any project under this section shall notify the supervisors in writing within fifteen (15) days of the action taken as a result of an emergency.

(2) The supervisors shall send one (1) copy of the notice, within five (5) days to the department.

(3) A team, called together as described in section 26-1514 (3), shall make an on-site inspection and individual written reports to the supervisors within thirty (30) days giving their observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within any five (5) year period, the supervisors shall request the team members to include in their reports a determination of

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the validity of the emergency action and to ascertain the feasibility of a more permanent solution to that emergency action.

(5) The supervisors shall determine the feasibility of a more permanent solution and shall recommend, within thirty (30) days, that the person put the solution into effect within a reasonable period of time, as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this act unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel, as provided in section 26-1515, be appointed to hear the dispute and make a final written decision thereon.

Section 9. There is a new R.C.M. section numbered 26-1518 that reads as follows:

26-1518. Modification of plan — cost sharing. If the final decision of the arbitration panel requires modifications or alterations from the original project plan, as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

Any of the involved entities may withdraw or modify required modification of the project within ten (10) days after the decision.

Section 10. There is a new R.C.M. section numbered 26-1519 that reads as follows:

26-1519. Application of flood plain management act. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 89, chapter 35, floodway management and regulation where designated flood plains or designated floodways have been established in accordance with that chapter.

Section 11. There is a new R.C.M. section numbered 26-1520 that reads as follows:

26-1520. Rules — minimum standards. (1) By July 1, 1975, the board of natural resources and conservation after consultation with the association of conservation districts shall adopt rules setting minimum standards and guidelines for the purposes of this act.

(2) By January 1, 1976, the supervisors of each district shall adopt by resolution after a public hearing rules setting standards and guidelines for projects, and exclusions, within their districts which shall meet or exceed the minimum standards set by the board under subsection (1) of this section.

Section 12. There is a new R.C.M. section numbered 26-1521 that reads as follows:

26-1521. Judicial review. Any final action under this act may be appealed within thirty (30) days to the district court.

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Section 13. There is a new R.C.M. section numbered 26-1522 that reads as follows:

26-1522. Public nuisance. Except for emergency action, a project engaged in by any person without prior approval, as prescribed in this act, is declared a public nuisance and subject to proceedings for immediate abatement.

Section 14. There is a new R.C.M. section numbered 26-1523 that reads as follows:

26-1523. Penalty — misdemeanor — restoration. (1) Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500), for each day that person continues to physically alter or modify the stream, and in addition that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

(2) Any person or entity who violates the time provisions of this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of five dollars ($5) per day.

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 18, 1975.

CHAPTER NO. 464

AN ACT TO AMEND SECTION 72-159, R.C.M. 1947, PROVIDING FOR REMOVAL OF SIDETRACKS, SPUR TRACKS, STOCK FACILITY, AND STOCK LOADING OR UNLOADING FACILITIES UNDER CERTAIN CONDITIONS WHEN SUCH FACILITY IS NO LONGER REQUIRED BY PUBLIC CONVENIENCE AND NECESSITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-159, R.C.M. 1947, is amended to read as follows:

"72-159. Power of the commission as to sidetracks, stockyards and chutes. The commission shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers operating within the state of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stockyards, stockchutes, or stockpens, whenever the necessity therefor has been established to the satisfaction of the commission*; provided, however, where a sidetrack, spur track or loading and unloading facility has been constructed for and used exclusively by a single shipper or industry and is not used by the public and the individual shipper or industry requests that such track or facility be removed from its property then such removal may*

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be made by giving notice of such request for removal to the commission and without necessity for approval of such removal; and, provided further, that in the event such sidetrack, spur track or stock facility formerly used by the public, has not been used by the public for loading or unloading rail shipments for a period of five (5) years, and proof thereof is established by affidavit of a railroad officer having knowledge thereof, then such installation or facility may be removed after the railroad involved has given ninety (90) days notice to the Montana public service commission, and to the Montana consumer counsel, unless the commission, within the ninety (90) day period notifies the railroad that such removal may not be made until approval by the commission, in which case the commission shall set a public hearing within ninety (90) days of such notice to the railroad, to determine whether public convenience and necessity requires the continued maintenance of such installation or facility."

Approved April 18, 1975.

CHAPTER NO. 465

AN ACT TO PROVIDE FOR ALTERNATIVE METHODS OF APPORTIONING UTILITY ASSESSMENTS TO THE COUNTIES AND AMENDING SECTIONS 84-708.1, 84-803, AND 84-906, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-708.1, R.C.M. 1947, is amended to read as follows:

"**84-708.1. Powers and duties of the state department of revenue.** (1) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, *or more than one (1) state. To* apportion such assessments to the counties in which such properties are located on a mileage basis, *or if the property of any company assessable under this section is of such a character that its value cannot reasonably be apportioned on the basis of mileage, the department may adopt such other method or basis of apportionment to the county or counties in which the property is situated as may be just and proper. All* lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the agent of the department of revenue in the county wherein they are situate.

(2) To transmit to the county clerk of each county its apportionment of all assessments made by the department.

(3) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers;

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supervise and review the acts of agents of the department; change, increase or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over its agents and any officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement. Further, the state department of revenue is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the department and the costs of such appraisers and assessors attending shall be borne by the state. Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary. The department shall notify all assessors and appraisers at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the state.

(5) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the department.

(9) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the department. Upon completion of such inspection and examination the department shall transmit to the clerk, or other proper official of the

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municipality, a statement of the expenses incurred by the department to secure the necessary information. Within sixty (60) days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(10) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the department shall have authority to investigate and determine.

(12) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department shall have authority to investigate and determine.

(13) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(14) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the department, and to furnish the governor such assistance as he may require.

(16) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the department, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime

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market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Section 2. Section 84-803, R.C.M. 1947, is amended to read as follows:

"**84-803. Duties of the state department of revenue respecting statement.** The state department of revenue must, within the time mentioned, in the preceding section, transmit by mail to the agent of the department in each county, to which such apportionment is made, a statement in detail sufficient for identification and location of the property, showing the assessed value per mile of the same *and the assessed value using such other methods referred to in section 84-708.1, R.C.M. 1947,* as fixed by a prorata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of such railroad, within the state, and the amount apportioned to the county and to each taxing subdivision thereof. The agent of the department of revenue in each county must enter the statement on the assessment roll of the county."

Section 3. Section 84-906, R.C.M. 1947, is amended to read as follows:

"**84-906. Transmission of statement of amount apportioned to counties.** The state department of revenue, must, not later than the second Monday of July, transmit or mail to the agent of the department in each county to which such apportionment has been made, a statement showing the length *or amount* of the property in such county; a description of the same sufficient for identification; the assessed value of the same as determined by the department; and the amount apportioned to the county. The agent of the department must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county."

Approved April 18, 1975.

CHAPTER NO. 466

AN ACT TO PROVIDE FOR DETERMINATION AND TREATMENT OF THE SERIOUSLY MENTALLY ILL AND THOSE SUFFERING FROM MENTAL DISORDERS; AMENDING SECTIONS 38-110, 38-212, 38-506, 38-507, AND 80-2501; REPEALING SECTIONS 38-107, 38-108, 38-109, 38-112, 38-113, 38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204, 38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2, 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403, 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408, 38-408.1, 38-502, 38-503, 38-504, 38-505, AND 64-112, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 38-1301 that reads as follows:

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38-1301. Purpose of act. The purpose of this act is:

(1) to secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person, and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to deprive a person of his liberty for purposes of treatment or care only when less restrictive alternatives are unavailable and only when his safety or the safety of others is endangered, and to provide for due process of law when this is done.

Section 2. There is a new R.C.M. section numbered 38-1302 that reads as follows:

38-1302. Definitions. As used in this act:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Court" means the district court of the state of Montana.

(3) "Department" means the department of institutions.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital or, a community mental health center, or any mental health clinic or treatment center approved by the department. No correctional institution or facility, or jail, is a mental health facility within the meaning of this act.

(7) "Next of kin" shall include, but need not be limited to, the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court to a seventy-two (72) hour evaluation or treatment or for a longer period.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman or other peace officer.

(10) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of mental health and certified by the department of institutions in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Respondent" means a person alleged in a petition filed pursuant to this act to be seriously mentally ill.

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(12) "Responsible person" means any person willing and able to assume responsibility for a seriously mentally ill person, or person alleged to be seriously mentally ill, including next of kin; the person's conservator or legal guardian, if any; representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a "responsible person" set out in this act. Only one person shall at any one time be the "responsible person" within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the respondent. The court may, at any time for good cause shown, change its designation of the "responsible person".

(13) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof; or which has deprived the person afflicted of the ability to protect his life or health. No person may be involuntarily committed to a mental health facility nor detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this act.

Section 3. There is a new R.C.M. section numbered 38-1303 that reads as follows:

38-1303. Voluntary admission — cost of admission. (1) Nothing in this act shall be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department of institutions. It shall not be valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. The form shall contain a statement of the rights of the person voluntarily applying for admission, as set out in this act, including the right to release.

(2) Any applicant who wishes to voluntarily apply for admission to the Montana state hospital shall first obtain certification from the regional mental health director of his mental health region or if not reasonably available, from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than five (5) days past his written request for release.

(4) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(5) The costs of transportation to a mental health facility under this section shall be provided by the patient, his parents, guardian, or the welfare department of the county of the patient's residence.

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(6) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

(7) Notwithstanding any other provision of law, a minor who is sixteen (16) years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(8) Voluntary commitment of a minor to a mental health facility for an in-patient course of treatment shall be for a period of no more than thirty (30) days. If the professional person in charge of a minor patient determines that the commitment should continue for a period of more than thirty (30) days, he shall commence involuntary commitment proceedings in accordance with this act. Counsel shall be appointed for the minor.

(9) If, in any voluntary commitment for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary commitment, then the commitment shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary commitment of a minor to a mental health facility. The notice shall be explained to the minor by the professional person approving the application.

Section 4. There is a new R.C.M. section numbered 38-1304 that reads as follows:

38-1304. Rights and waiver of rights. (1) Whenever a person is involuntarily detained, or is examined by a professional person pursuant to section 38-1305, or is notified that he will be the subject of a hearing pursuant to section 38-1305 or 38-1306, the person shall be informed of his constitutional rights and his rights under this act. A person may waive his procedural rights, provided that the waiver is knowingly and intentionally made. The right to counsel in a hearing held pursuant to section 38-1306 may not be waived. The right to treatment provided for in this act may not be waived.

(2) In the case of a person who has been detained for a seventy-two (72) hour inpatient evaluation and treatment or for a longer period of time, a waiver of rights can be knowingly and intentionally made only with the concurrence of the patient's attorney or of the responsible person appointed by the court. The right of the respondent to be physically present at a hearing may also be waived by his attorney and the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition, and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse affects on his mental condition.

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(3) In the case of a minor, the waiver of rights can be knowingly and intentionally made:

(a) when the minor is under the age of twelve (12), by the parents of the minor;

(b) when the minor is over the age of twelve (12), by the youth and his parents;

(c) when the minor is over the age of twelve (12) and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with advice of counsel.

If there is an apparent conflict of interest between a minor and his parents or guardian, the court may appoint a guardian ad litem for the minor.

(4) In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state or by this act, any person who is involuntarily detained or against whom a petition is filed pursuant to this act has the following rights:

(a) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(b) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(c) the right in any hearing to cross-examine witnesses;

(d) the right to be represented by counsel;

(e) the right to remain silent;

(f) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(g) the right to view and copy all petitions on file with the court concerning him;

(h) the right to be examined by a professional person of his choice when such professional person is reasonably available;

(i) the right to be dressed in his own clothes at any hearing held pursuant to this act;

(j) the right to refuse any but lifesaving medication for up to twenty-four (24) hours prior to any hearing held pursuant to this act.

Section 5. There is a new R.C.M. section numbered 38-1305 that reads as follows:

38-1305. Petition alleging person as seriously mentally ill — contents and procedure. (1) A county attorney on his own initiative or upon the request of any person may file a petition with the court alleging that there is a person within the county who is seriously mentally ill and requesting that an evaluation of the person's condition be made.

(2) The petition shall contain:

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(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent, and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin, to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as responsible person;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought. If there is no attorney, there shall be a statement as to whether, to the best knowledge of the person requesting the petition, the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is seriously mentally ill. If the court finds no such probable cause, the petition shall be discharged. If the court finds probable cause it shall submit the petition to a professional person for evaluation. If probable cause is found, the court may appoint a responsible person to protect the interests of the respondent. The responsible person shall be notified as soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be hand delivered or mailed to the respondent and to the attorney, the person or persons legally responsible for care, support, and maintenance of the respondent, next of kin identified in the petition, and the person or persons identified by the county attorney as possible responsible persons.

(4) (a) Upon receipt of the petition, the professional person shall examine the respondent and make such inquiry as he or she may deem appropriate. If the respondent does not cooperate and if requested by the professional person, the court may order the respondent to submit to examination by a professional person at a time and place designated by the court. The examination so ordered shall not exceed a period of four (4) hours.

(b) When the professional person first contacts the respondent, before he begins any examination, he shall give a copy of the petition to the respondent, and shall explain to the respondent the nature of the proceeding and his rights as set forth in the petition.

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(5) On the basis of his examination, the professional person shall recommend in writing either that the petition be dismissed or that a seventy-two (72) hour inpatient evaluation and treatment be ordered. If dismissal is recommended, the petition shall be summarily dismissed. The petition shall be dismissed if the respondent accepts voluntary treatment or admission to a mental health facility approved by the professional person conducting the examination. Whenever a professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered, the recommendation shall be accompanied by a report explaining the reason for the recommendation and identifying any tests or evaluation devices which the professional person employed in evaluating the respondent. If the professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered, notice of this recommendation shall be mailed or delivered to the respondent, the next of kin, when known, any person responsible for the care, support, and maintenance of the respondent, any other person identified in the petition, and the responsible person, if any, appointed by the court. Notice shall include the date, time, and place of the respondent's next appearance before the court.

(6) In the event the examining professional person recommends a seventy-two (72) hour inpatient evaluation and treatment, the respondent shall be brought before the court by the county attorney without undue delay, advised of the recommendation, supplied with a copy of the petition and the recommendation and advised of his rights to a hearing and to counsel. If a responsible person has not yet been appointed, the court shall appoint a responsible person at this time. If the right to a hearing and to counsel are waived, the court shall direct that the respondent be detained at a mental health facility for evaluation and treatment not to exceed seventy-two (72) hours. If a hearing is requested by the respondent, his attorney, or the responsible person appointed by the court, a time and place shall be set for the hearing. The matter shall be given precedence over all other court matters. If the respondent is unwilling or unable to retain counsel, the court shall appoint counsel and be responsible for notification.

(7) The hearing shall be held before the court without a jury. The respondent may present such testimony and relevant documentary evidence as he or the responsible person or counsel desires. The county attorney shall represent the state. The professional person who made the recommendation shall be present in court and may be cross-examined concerning his recommendation and his report. After full hearing the court shall determine whether the respondent is seriously mentally ill within the definition provided herein. If the court finds the respondent is not seriously mentally ill, he or she shall be discharged and the petition dismissed. If the court finds the respondent to be seriously mentally ill, it shall order the respondent detained at a mental health facility for examination and treatment not exceeding seventy-two (72) hours. However, the court may dismiss the petition if the respondent agrees to accept voluntary treatment or admission to a mental health facility.

(8) Persons receiving evaluation and treatment pursuant to this section shall be given a reasonable choice of an available professional person qualified to provide such services.

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Section 6. There is a new R.C.M. section numbered 38-1306 that reads as follows:

38-1306. Petition for commitment — trial — determination of court. (1) If in the opinion of the professional person in charge of the patient the person detained under the provisions of section 38-1305 does not require further evaluation or treatment he shall be released within seventy-two (72) hours. If, in the opinion of the professional person, the patient requires further evaluation or treatment, he shall advise the court accordingly not less than three (3) days from the date of detention and shall within the same time file a petition requesting that the patient be committed to a facility for a period not in excess of three (3) months. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall explain the reasons for the petition and shall identify any tests or evaluation devices which the professional person employed in evaluating the patient. The professional person may retain the patient in custody by court order pending a hearing on the petition only if detention is necessary to prevent injury to the patient or others.

(2) Upon receipt of a petition for commitment not to exceed three (3) months, the court shall immediately set the time and place for a hearing, which shall be held not more than three (3) days from the receipt of the petition. The court may extend the period to seven (7) days. The time for the hearing may be further extended at the request of counsel for the patient. The court shall give written notice to the professional person who requested the commitment, the patient, his counsel, his next of kin, when known, the responsible person appointed by the court, and the county attorney. At any time prior to the date set for hearing, the patient, or his attorney, may request a jury trial, whereupon the time set for hearing will be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters on the jury calendar.

(3) At any time prior to trial on the petition before court or jury, the patient may waive trial and give written consent to commitment to a facility for a period not to exceed three (3) months. Such consent must be joined in writing, by his attorney and by the responsible person appointed by the court.

(4) The patient shall be present and represented by counsel at all stages of the trial, and the sole question to be determined by the court or jury, as the case may be, shall be whether the patient is seriously mentally ill within the meaning set forth in this act. The professional person who filed the petition shall be present in court for the hearing and subject to cross-examination. The trial shall be governed by the Montana rules of civil procedure except that, if tried by a jury, at least three-fourths (¾) of the jurors must concur on a finding that the patient is seriously mentally ill. The finding may be appealed to the Montana supreme court in the same manner as other civil matters. The standard of proof in any hearing held pursuant to this section shall be proof beyond a reasonable doubt. Any court may order a hearing closed to the public for the protection of the respondent.

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(5) If, upon hearing, it is determined that the patient is not seriously mentally ill within the meaning of this act, he shall be discharged and the petition of the professional person dismissed. If it is determined that the patient is seriously mentally ill within the meaning of this act the court shall:

(a) commit the patient to a facility for a period of not more than three (3) months;

(b) order the patient to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(c) order outpatient therapy; or

(d) make some other appropriate order for treatment. No treatment ordered pursuant to this subsection shall affect the patient's custody for a period of more than three (3) months.

In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the patient and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the patient are available, what alternatives were investigated and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

At any time within the three (3) month period the patient may be discharged on the written order of the professional person in charge of the patient. In the event the patient is not discharged within the three (3) month period and if the term is not extended as provided herein, the patient shall be discharged by the facility at the end of three (3) months without further order of the court. Notice of such discharge will be filed with the court within five (5) days of the discharge.

(6) Not less than two (2) calendar weeks prior to the end of the three (3) month period of detention, the professional person in charge of the patient may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient and the future course of treatment anticipated by the professional person. Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and to the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority the court shall immediately set a time and place for such a hearing on a date not more than ten (10) days from the receipt of the request and notify the same people including the professional person in charge of the patient. Procedure on the petition for extension shall be the same in all respects, as the procedure on the petition for the original three (3) month commitment except the patient shall not be entitled to trial by jury. The hearing shall be

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held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this act, the patient shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy or other order as set forth in subsection (5) of this section except that no order shall affect his custody for more than six (6) months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. Any court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(7) Further extensions may be obtained under the same procedure described in subsection (6) of this section except that the patient's custody shall not be affected for more than one (1) year, without a renewal of the commitment under the procedures set forth in subsection (6) of this section, including a statement of the findings required by subsection (6).

(8) At any time during the patient's commitment the court may on its own initiative or upon application of the professional person in charge of the patient, the patient, his next of kin, his attorney, or the responsible person appointed by the court, order the patient to be placed in the care and custody of relatives or guardians, or to be provided outpatient therapy or other appropriate placement or treatment.

Section 7. There is a new R.C.M. section numbered 38-1307 that reads as follows:

38-1307. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and, as a result of serious mental illness, to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation genuinely exists, then the person may be detained until the next regular business day. At that time, the professional person shall either cause the county attorney to file the petition provided for in section 38-1305 or shall release the detained person. In either case, the professional person shall file a report with the court explaining his actions.

(3) When the petition is filed, after an emergency detention, the court may order the respondent detained for the amount of time necessary for a professional person to conduct the examination and inquiry provided for in section 38-1305 and to report his findings and recommendations to the court. In no case shall such detention exceed twenty-four (24) hours from the time of the filing of the petition. Saturday, Sunday, and legal

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holidays shall not be included in computing the twenty-four (24) hour period. The court may also order the respondent detained during the seventy-two (72) hour evaluation and treatment period, if ordered, and through the period of the hearing on initial commitment, if held. No period of detention shall be ordered by the court pursuant to this section unless the court finds that such detention is required in the interest of public safety or the life or safety of the respondent. An order of detention shall include a statement of the factual basis for the order.

(4) Any person detained pursuant to this section shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or of members of the public. Whenever possible, a person detained pursuant to this section shall be detained in a mental health facility. A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and of the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility. In no case shall a person be detained in a jail or other correctional facility pursuant to this section for a longer period of time than is required for the county attorney to file a petition and for a professional person to complete his initial examination and inquiry and report his findings to the court.

(5) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section.

Section 8. There is a new R.C.M. section numbered 38-1308 that reads as follows:

38-1308. Outpatient care — conditional release. (1) When in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then such outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when such modification is in the best interest of the patient.

(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release, and because of that failure has become a substantial danger to himself or other persons, then, upon notification

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by the mental health facility designated to provide outpatient care, or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind such order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, and his guardian or conservator, if any, his next of kin, if known, and the responsible person appointed by the court.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the professional person in charge of the patient's case on the same basis set forth therein without the professional person requiring or ordering the apprehension and detention of the conditionally released person.

Upon expiration of the period of commitment, or when the patient is released from outpatient care, notice in writing to the court which committed the patient for treatment shall be provided by the professional person in charge of the patient.

Section 9. There is a new R.C.M. section numbered 38-1309 that reads as follows:

38-1309. Right to counsel and appeal — examination of respondent — records. (1) The person alleged to be seriously mentally ill shall have the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint an attorney to represent him at either the hearing or the trial or both. If the court determines that the respondent is financially unable to employ an attorney, the court shall appoint counsel who shall be compensated from the public funds of the county where the respondent resides. The county of residence shall also pay all precommitment expenses including transportation to a mental health facility incurred in connection with the detention, examination, and precommitment custody of the respondent.

(2) The respondent, his attorney, or the responsible person appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(3) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, and if the respondent joins in the request for such examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

(4) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised of his right to appeal such order by the court at the conclusion of any hearing as a result of which such an order may be entered.

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(5) Records and papers in proceedings under this act shall be maintained separately by the clerks of the several courts. Upon the release of any respondent or patient, the facility shall notify the clerk of the court within five (5) days of the release, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indices of cases in such court unless the court orders the record opened for good cause shown.

Section 10. There is a new R.C.M. section numbered 38-1310 that reads as follows:

38-1310. Transfer or commitment to facility — procedure. No person who is in the custody of the department of institutions for any purpose other than treatment of severe mental illness shall be transferred or committed to a mental health facility unless such transfer or commitment is effected according to the procedures set out in this act.

Section 11. There is a new R.C.M. section numbered 38-1311 that reads as follows:

38-1311. Appeal procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.

Section 12. There is a new R.C.M. section numbered 38-1312 that reads as follows:

38-1312. Effect of act on persons currently judged mentally ill. Any person who, by reason of a judicial decree entered by a court of this state prior to the enactment of this act adjudicating such person mentally ill shall, one (1) year following the effective date of this act be deemed to have been released and restored to legal capacity and competency unless, before that time, a petition for an extended detention order is filed with the court.

Section 13. There is a new R.C.M. section numbered 38-1313 that reads as follows:

38-1313. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for treatment, evaluation or care.

(2) Whenever any person is committed to a mental health facility for a period of three (3) months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section shall terminate upon the conclusion of the involuntary commit-

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ment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) Any person who has been committed to a mental health facility pursuant to this act shall be automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection shall not affect, however, any guardianship or conservatorship created independently of the commitment proceedings, according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Any person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) Any person committed to a mental health facility prior to the effective date of this act shall enjoy all the rights and privileges of a person committed after the effective date of this act.

(5) No person who has received evaluation or treatment under any provisions of this act shall be discriminated against because of such status. For purposes of this section, "discrimination" means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at any mental health facility shall not be admitted into evidence in any subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator.

Section 14. There is a new R.C.M. section numbered 38-1314 that reads as follows:

38-1314. Transfer of person committed. (1) If a person is committed under the provisions of this act and is eligible for hospital care or treatment by an agency of the United States, and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which a person is so hospitalized shall be vested with the same powers as the superintendent of the Montana state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so hospitalized, and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this act, a person committed under this act for a period of three (3) months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state, if the out-of-state facility agrees to receive the patient, provided, however, that no such commitment shall be for a longer period of time than is permitted

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within the state. If the patient is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons committed under the provisions of this act out of Montana or under the laws of another jurisdiction into Montana shall be governed by the provisions of the interstate compact on mental health.

Section 15. There is a new R.C.M. section numbered 38-1315 that reads as follows:

38-1315. Fingerprinting prohibited. No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

Section 16. There is a new R.C.M. section numbered 38-1316 that reads as follows:

38-1316. Photographs permitted — confidential. (1) A person admitted to a mental health facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical photographs shall be taken or used without consent of the patient's legal guardian or the responsible person appointed by the court.

Section 17. There is a new R.C.M. section numbered 38-1317 that reads as follows:

38-1317. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment.

(3) Patients shall have the same rights to visitation and reasonable access to private telephone communications as patients at any public hospitals, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys, with spiritual counsellors, and with private physicians and other professional persons.

(4) Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their attorneys, private physicians, and other professional persons, from the mental disabilities board of visitors, from courts, and government officials. Patients shall have a right to receive sealed mail from others, except to the extent that a professional person responsible for formulation of a

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particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions including toilet articles, except insofar as such clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the patient's throughout his stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for such worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. Moreover, it shall be the duty of the facility to provide facilities and equipment for such exercise. Patients have a right to be outdoors at regular and frequent intervals, in the absence of contrary medical considerations.

(10) Patients have the right to be provided with adequate supervision, suitable opportunities for interaction with members of the opposite sex, except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with his medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the patient, or the responsible person, in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities shall be

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designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the accomplishment of this goal:

(a) Regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented.

(b) There must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) Pursuant to an established routine maintenance and repair program, the physical plant of every facility shall be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients.

(d) Every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet such provisions of the Life Safety Code of the national fire protection association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals, insofar as they are relevant to psychiatric facilities.

Section 18. There is a new R.C.M. section numbered 38-1318 that reads as follows:

38-1318. Patient labor — rules. The following rules shall govern patient labor:

(1) No patient shall be required to perform labor which involves the operation and maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206 as amended.

(2) (a) Patients may be required to perform therapeutic tasks which do not involve the operation and maintenance of the facility, provided the specific task or any change in assignment is:

(i) An integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) Supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor assignment is:

(i) An integrated part of the patient's treatment plan and approved

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as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) Supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) Compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206 as amended.

(3) If any patient performs therapeutic labor which involves the operation and maintenance of a facility, but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature such as the making of one's own bed.

(5) Deductions or payments for care and other charges shall not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

Section 19. There is a new R.C.M. section numbered 38-1319 that reads as follows:

38-1319. Medication for patients. Patients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The attending physician shall be responsible for all medication given or administered to a patient. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. At least weekly an attending physician shall review the drug regimen of each patient under his care. Except in the case of outpatients, all prescriptions shall be written with a termination date, which shall not exceed thirty (30) days. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

Section 20. There is a new R.C.M. section numbered 38-1320 that reads as follows:

38-1320. Physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations, in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than one (1) hour, by which time a professional person shall have been consulted and shall have

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entered an appropriate order in writing. Such written order shall be effective for no more than twenty-four (24) hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort.

Section 21. There is a new R.C.M. section numbered 38-1321 that reads as follows:

38-1321. Research on patients — restrictions. Patients shall have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give such consent, and of his guardian, if any, and the responsible person appointed by the court, after opportunities for consultation with independent specialists and with legal counsel. If there is no responsible person or if the responsible person appointed by the court is no longer available, then a responsible person who is in no way connected with the facility, the department of institutions, or the research project shall be appointed prior to the involvement of the patient in any experimental research. The facility shall send notice of intent to involve the patient in experimental research to the patient, his next of kin, if known, his legal guardian, if any, the attorney who most recently represented him, and the responsible person appointed by the court at least ten (10) days prior to the commencement of such experimental research.

Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare for projects supported by that agency.

Section 22. There is a new R.C.M. section numbered 38-1322 that reads as follows:

38-1322. Treatment procedures — restrictions. Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the responsible person appointed by the court, and any other interested party of the patient's choice. At least one (1) of those consulted must consent to the treatment. If there is no responsible person or if the responsible person appointed by the court is no longer available, then a responsible person who is in no way connected with the facility or with the department of institutions shall be appointed before any such treatment procedure can be employed. The facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him and the responsible person appointed by the court at least ten (10) days prior to the commencement of such extraordinary treatment program.

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Section 23. There is a new R.C.M. section numbered 38-1323 that reads as follows:

38-1323. Professional person — qualifications. In every mental health facility to which a person is admitted pursuant to this act:

(1) Each professional person and other staff member employed by the facility shall meet all certification requirements promulgated by the department of institutions.

(2) All nonprofessional staff members who have not had prior clinical experience in a mental institution shall have a substantial orientation training.

(3) Staff members on all levels shall have regularly scheduled in-service training.

(4) Each nonprofessional staff member shall be under the direct supervision of a professional person.

Section 24. There is a new R.C.M. section numbered 38-1324 that reads as follows:

38-1324. Treatment plan for patient established. (1) Each patient admitted as an inpatient to a mental health facility for a period of more than seventy-two (72) hours shall have a comprehensive physical and mental examination and review of behavioral status within forty-eight (48) hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons including a psychiatrist, if reasonably available and implemented as soon as possible, in any event, no later than five (5) days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions, and criteria for discharge;

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) As part of his treatment plan, each patient shall have an

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individualized after care plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible, one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every ninety (90) days, each patient shall receive a mental examination from, and his treatment plan shall be reviewed by, a professional person other than the professional person responsible for supervising the implementation of the plan.

Section 25. There is a new R.C.M. section numbered 38-1325 that reads as follows:

38-1325. Examination following commitment. No later than fifteen (15) days after a patient is committed to a mental health facility, the professional person in charge of the facility, or his appointed, professionally qualified agent, shall examine the committed patient and shall determine whether the patient continues to require commitment to the facility and whether a treatment plan complying with this act has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, or if a treatment plan has not been implemented, he must be released immediately unless he agrees to continue with treatment on a voluntary basis.

Section 26. There is a new R.C.M. section numbered 38-1326 that reads as follows:

38-1326. Care and treatment following release. The department of institutions and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include, but are not limited to, psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a half-way house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

Section 27. There is a new R.C.M. section numbered 38-1327 that reads as follows:

38-1327. Treatment of children and young adults. In addition to complying with all the other standards herein, a mental health facility shall make special provisions for the treatment of patients who are children and young adults. These provisions shall include, but are not limited to:

(a) Opportunities for publicly supported education suitable to the

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educational needs of the patient. This program of education must, in the opinion of the attending professional person be compatible with the patient's mental condition and his treatment program, and otherwise be in the patient's best interest.

(b) A treatment plan which considers the chronological, maturational, and developmental level of the patient.

(c) Sufficient professional persons, teachers, and staff members with specialized skills in the care and treatment of children and young adults.

(d) Recreation and play opportunities in the open air where possible and appropriate residential facilities, separate, wherever possible, from older patients.

(e) Arrangements for contact between the facility and the family of the patient.

Section 28. There is a new R.C.M. section numbered 38-1328 that reads as follows:

38-1328. Records to be maintained. Complete patient records shall be kept by the mental health facility and shall be available to any professional person or attorney authorized in writing by the patient and the board. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including, but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive, not interpretative, fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after care plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status, which includes the signed orders

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of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out;

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary on at least a weekly basis by a professional person involved in the patient's treatment of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information, and initialed within twenty-four (24) hours by a professional person;

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the fifteen (15) day review provided for in section 38-1325.

Section 29. There is a new R.C.M. section numbered 38-1329 that reads as follows:

38-1329. Records to be confidential — exceptions. All information obtained and records prepared in the course of providing any services under this act to individuals under any provision of this act shall be confidential and privileged matter. Such information and records may be disclosed only:

(1) in communications between qualified professional persons in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward, and his guardian or conservator designates, in writing, persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research, if the department of institutions has promulgated rules for the conduct of research. Such rules shall include, but not be

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limited to, the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts, as necessary to the administration of justice;

(6) to persons authorized by an order of court after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in section 38-1330.

Section 30. There is a new R.C.M. section numbered 38-1330 that reads as follows:

38-1330. Mental disabilities board of visitors — creation and responsibilities. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five (5) persons at least three (3) of whom shall not be professional persons and at least one (1) of whom shall be a representative of an organization concerned with the care and welfare of the mentally ill. No one may be a member of the board who is an agent or employee of the department of institutions or of any mental health facility affected by this act. If a board of similar title and structure is created in any act concerning the treatment of the mentally retarded or developmentally disabled, then one board shall be created to perform the functions set out in both acts and the board so created shall include at least one (1) representative of an organization concerned with the care and welfare of the mentally ill and one (1) representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this act.

(3) The board shall review all plans for experimental research involving persons admitted to any mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to any mental health facility affected by this act shall be commenced unless it is approved by the mental disabilities board of visitors.

(4) The board shall, at least annually, inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

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(5) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this act. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(7) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the next of kin or guardian of any patient involved, the responsible person appointed by the court for any patient involved, the professional person in charge of the facility, the director of the department of institutions, and the district court which has jurisdiction over the facility.

(8) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the Montana legislature concerning the status of the mental health facilities and treatment programs which it has inspected.

(9) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this act.

Section 31. There is a new R.C.M. section numbered 38-1331 that reads as follows:

38-1331. Standards for treatment to be known. Each patient and his next of kin, guardian, conservator, or the responsible person appointed by the court shall promptly upon the patient's admission receive written notice, in language he understands, of all the above standards for adequate treatment. In addition a copy of all the above standards shall be posted in each ward.

Section 32. Section 38-110, R.C.M. 1947, is amended to read as follows:

"**38-110. Maintenance of indigent persons on discharge.** *Prior to* the discharge of a patient from *a mental health facility, the professional person in charge of the facility* shall notify the *welfare department* of the county from which the patient was committed. The county *welfare department* shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county *welfare department* shall properly care for and maintain the discharged patient under the *laws of this state relating to public welfare* until the patient is able to care for himself, or until another provision has been made for care of the patient."

Section 33. Section 38-212, R.C.M. 1947, is amended to read as follows:

"**38-212. Cost of examination and commitment.** The cost of the examination, committal, and taking *a person who is seriously mentally*

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ill to a mental health facility must be paid by the county in which he resides at the time he is adjudged *to be seriously mentally ill.* The sheriff must be allowed the actual expenses incurred in taking *a person who is seriously mentally ill* to the *facility,* as provided by section 16-2723 of this code."

Section 34. Section 38-506, R.C.M. 1947, is amended to read as follows:

"**38-506. Support of patient conditionally released.** When *a mental health facility conditionally releases a patient committed to its care,* it is not liable for his support while *conditionally released.* Liability devolves upon the legal guardian, parent, or person under whose care the patient is placed *when conditionally released,* or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found, are responsible for providing relief and care for *a conditionally released* patient who is unable to maintain himself, or who is unable to secure support from the person under whose care he was placed on convalescent leave, like any other person in need of relief and care, under the public welfare laws."

Section 35. Section 38-507, R.C.M. 1947, is amended to read as follows:

"**38-507. Clothing for patient on conditional release or discharged patient.** A patient may not be discharged or *conditionally released* from *a mental health facility* without suitable clothing adapted to the season in which he is discharged."

Section 36. Section 80-2501, R.C.M. 1947, is amended to read as follows:

"**80-2501. Location and function of center.** The institution located at Lewistown is the "Montana Center for the Aged". The primary function of the center is the care and treatment of persons who have been admitted to Warm Springs state hospital and subsequently transferred to the center."

Section 37. **Severability clause.** If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 38. Sections 38-107, 38-108, 38-109, 38-112, 38-113, 38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204, 38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2, 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403, 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408, 38-408.1, 38-502, 38-503, 38-504, 38-505, and 64-112, R.C.M. 1947, are repealed.

Approved April 18, 1975.

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CHAPTER NO. 467

AN ACT REQUIRING FIFTY PERCENT OF THE NET MOTOR VEHICLE LICENSE FEES DERIVED FROM REGISTRATION OF MOTOR VEHICLES WHOSE OWNERS RESIDE WITHIN THE LIMITS OF INCORPORATED CITIES AND TOWNS TO BE PAID TO THOSE CITIES AND TOWNS; REMOVING CERTAIN REFERENCES TO THE COUNTY ROADS SUPERINTENDENT AND COUNTY SURVEYOR; AMENDING SECTIONS 32-3702 AND 32-3703, R.C.M. 1947; AND REPEALING SECTIONS 32-3704 AND 32-3705, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3702, R.C.M. 1947, is amended to read as follows:

"**32-3702. Population centers—city road fund— county road fund.** (1) The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund" fifty percent (50%) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city *or town.*

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund"."

Section 2. Section 32-3703, R.C.M. 1947, is amended to read as follows:

"**32-3703. Population centers—use of city road fund.** (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits."

Section 3. Sections 32-3704 and 32-3705, R.C.M. 1947, are repealed.

Approved April 18, 1975.

CHAPTER NO. 468

AN ACT TO PROVIDE FOR THE IDENTIFICATION, HABILITATION AND HUMAN RIGHTS OF THE DEVELOPMENTALLY DISABLED; AND REPEALING SECTIONS 38-301 THROUGH 38-303, AND 80-2303 THROUGH 80-2309, AND 80-2312, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 38-1201 that reads as follows:

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38-1201. Purpose. The purpose of this act is:

(1) to secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person, and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this act.

Section 2. There is a new R.C.M. section numbered 38-1202 that reads as follows:

38-1202. Definitions. As used in this act:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Community-based facilities" or "community-based services" include those services and facilities which are available for the evaluation, treatment and habilitation of the developmentally disabled in a community setting, including but not limited to, outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means the district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor, or

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(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating and habilitating the developmentally disabled on an inpatient basis, including the Boulder River School and Hospital and the Eastmont Training Center. The term does not include a group home or foster home or a halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this act.

(10) "Respondent" means a person alleged in a petition filed pursuant to this act to be developmentally disabled and in need of developmental disabilities services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled. Whenever, in any proceeding under this act, the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian, or that the parents or guardian are unable to protect the interests of such person, or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. Only one person shall at any one time be the responsible person within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both rendering a person unable to function in a community-based setting.

Section 3. There is a new R.C.M. section numbered 38-1203 that reads as follows:

38-1203. Rights — waiver. (1) Any person subject to emergency admittance to a residential facility, to examination or evaluation by a professional person, or to any hearing held pursuant to this act shall have all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill.

(2) In addition, the parents or guardian of any person alleged to be developmentally disabled and in need of developmental disabilities services have the right:

(a) to be present at any hearings held pursuant to this act;

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(b) to be represented by counsel in any hearing;

(c) to offer evidence and cross-examine witnesses in any hearing; and

(d) to have the respondent be examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) A person may waive his procedural rights provided that the waiver is knowingly and intentionally made. The right to counsel in a hearing held pursuant to section 38-1206 may not be waived. The right to habilitation provided for in this act may not be waived.

(4) In the case of a person who has been admitted to a residential facility for up to thirty (30) days of evaluation and treatment, or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any.

(5) In the case of a minor, the waiver of rights can be knowingly and intentionally made:

(a) when the minor is under the age of twelve (12), by the parents of the minor with the concurrence of the responsible person, if any;

(b) when the minor is over the age of twelve (12), by the minor and his parents;

(c) when the minor is over the age of twelve (12) and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with the advice of counsel.

If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.

Section 4. There is a new R.C.M. section numbered 38-1204 that reads as follows:

38-1204. Assistance of professional person. (1) The parents or guardian of any person alleged to be developmentally disabled or the person himself may at any time request the assistance of a professional person in determining whether the person is developmentally disabled, the extent of such disability, and the most appropriate course of treatment, habilitation and education for the person alleged to be developmentally disabled.

(2) Whenever the parents or guardian of a person alleged to be developmentally disabled or the person himself request a course of evaluation and treatment, they shall ascertain, with the professional person who undertakes the case, the least restrictive means of evaluating and treating the person alleged to be developmentally disabled. Evaluation and treatment in a residential facility shall take place only upon certifi-

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cation by the professional person in charge of the case that adequate community-based facilities are not available reasonably near the place of residence of the person alleged to be developmentally disabled. Residential evaluation and treatment shall not be for more than thirty (30) days without subsequent proceedings before the court.

Section 5. There is a new R.C.M. section numbered 38-1205 that reads as follows:

38-1205. Procedure for reporting developmentally disabled. (1) Any person who believes that there is a person who is developmentally disabled and in need of developmental disability services may report the situation to a professional person. If the professional person believes from the facts given to him that the person may be developmentally disabled and in need of developmental disability services, he shall contact the parents or guardian of the person alleged to be developmentally disabled or the person himself. If any of the persons so contacted refuse to cooperate with the professional person and if the professional person believes from all the circumstances of the case that the person may be developmentally disabled and in need of developmental disabilities services he shall request the county attorney to file a petition alleging that there is a person in the county who is developmentally disabled and in need of developmental disabilities services.

(2) The petition shall contain the name and address of:

(a) the professional person and any other person requesting the petition, and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent, and of any other person believed to be legally responsible for the care, support and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person whom the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian which shall be in conspicuous print and identified by a suitable heading.

(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is developmentally disabled and in need of evaluation and treatment. If the court finds no such probable cause it shall dismiss the petition. If the court finds that probable cause does exist it shall direct a professional person to examine the respondent and to make an inquiry concerning the circumstances of the case. Such examination shall not exceed four (4) hours in length. If probable cause is found the court may appoint a responsible person other than the respondent's parents or guardian to protect the interests of the respondent. The responsible person shall be notified as

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soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be mailed or delivered to the respondent and to all other persons named in the petition and to any person who would have been named in the petition had his name, address, and relationship to the respondent been known at the time.

(4) When the professional person first contacts the respondent, before he begins any examination, he shall give the respondent a copy of the petition and explain to the respondent the nature of the proceeding and his rights as set forth in the petition. If the respondent is incapable of understanding the explanation and proceeding, the professional person shall give the petition and make the explanation to the parents or guardian of the respondent. Before making any inquiry of the parents or guardian of the respondent, the professional person shall give them a copy of the petition, explain the nature of the proceeding and their rights as set forth in the petition.

Section 6. There is a new R.C.M. section numbered 38-1206 that reads as follows:

38-1206. Petition dismissal — hearing — counsel — treatment. (1) If the professional person, based on his examination and inquiry, determines that the respondent is not developmentally disabled or is not in need of developmental disability services, he shall report this finding in writing to the court and the petition shall be dismissed. If the professional person concludes that the respondent is developmentally disabled and in need of developmental disability services, he shall report this conclusion to the court in writing together with his recommendations for evaluation and treatment. The report shall include an explanation of the basis on which the professional person has reached his conclusion and shall include a description of any tests or evaluation devices he has employed. If the professional person's recommendation is for further evaluation and treatment, notice of this recommendation shall be sent to the respondent, his parents or guardian, the next of kin, the responsible person appointed by the court, if any, any attorney representing the respondent or his parents or guardian. If no responsible person has yet been appointed, the court may appoint one at this time.

(2) If the respondent, his parents or guardian, the responsible person, if any, or counsel for any party requests a hearing on the recommendation, the court shall set a time and place for hearing. The hearing shall be before the court without a jury. The rules of civil procedure shall apply.

(3) Prior to any hearing held pursuant to this section, the court shall appoint counsel to represent the respondent, if the respondent has not retained independent counsel. The parents or guardian shall be informed of their right to counsel and if they are indigent the court shall, on their request, appoint counsel for them. In no case shall the same attorney represent the respondent and his parents or guardian.

(4) If the hearing is waived or if the court finds, after hearing, that the respondent is developmentally disabled and in need of further evaluation and treatment, the court shall order that the respondent undergo such evaluation and treatment. Evaluation and treatment ordered pur-

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suant to this subsection shall be for no more than thirty (30) days. It shall take place in the least restrictive environment in which the necessary evaluation and treatment can be accomplished. Evaluation and treatment in a residential facility shall be ordered only if the necessary evaluation and treatment cannot be accomplished through the use of community-based facilities.

Section 7. There is a new R.C.M. section numbered 38-1207 that reads as follows:

38-1207. Recommendation — hearing on certain treatment. (1) If as a result of the evaluation and treatment ordered by the court, the professional person in charge of the case recommends a course of habilitation and treatment at the community level making use of community and regional based services for the developmentally disabled, he shall report his recommendation in writing to the court. The recommendation shall be accompanied by a written report indicating the factual basis for the recommendation and describing any tests or evaluation devices which the professional person has employed in evaluating the respondent. If this course of treatment and habilitation is agreed to by the parents, guardian, person evaluated, responsible person, if any, and counsel for the person evaluated, if any, then this community-based course of treatment shall be commenced as soon as practicable, and the petition shall be dismissed.

(2) If any of the parties listed in the preceeding paragraph object to the community-based course of treatment, they may request the court to conduct a hearing on the matter. If a responsible person has not yet been appointed, the court may appoint a responsible person prior to the hearing. Notice of the time, date and place of the hearing shall be mailed or delivered to all of the parties listed in the preceding paragraph, and to the attorney for the parents or guardian, if any. The hearing shall be held before the court without a jury. The rules of civil procedure shall apply. If the court finds that the respondent is developmentally disabled and in need of community-based developmental disabilities services, it shall order that the respondent undertake a community-based course of treatment and habilitation.

Section 8. There is a new R.C.M. section numbered 38-1208 that reads as follows:

38-1208. Recommendation to residential facility. (1) If as a result of the evaluation and treatment either agreed to by the parents, guardian, or the person himself pursuant to section 38-1204 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation, and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian the court shall appoint a responsible person. At the request of the respondent, his parents or guardian or the responsible person, the court

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shall appoint counsel for the respondent. If the parents or guardian are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, and in need of developmental disabilities services but that available community-based services are adequate, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation, or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person.

(5) If any person is admitted to a residential facility for an extended course of habilitation without a hearing, and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative, if it is a community-based alternative, or transfer the resident to the alternative, if it is a residential alternative. Any such transfer or release shall comply with the requirements of section 38-1209. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in subsection (2) of this section.

Section 9. There is a new R.C.M. section numbered 38-1209 that reads as follows:

38-1209. Admission to residential facility. (1) No person shall be admitted to a residential facility for longer than thirty (30) days except on approval of the court. Whenever a person is admitted to a residential

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facility for longer than thirty (30) days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is admitted to the residential facility. In no case shall this maximum period exceed one (1) year.

(3) If at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the professional person in charge of the resident decides that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident, or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to such community-based alternative or transfer the resident to the other residential facility no less than fifteen (15) days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing shall comply with the procedures set forth in section 38-1208. The court may on its own initiative inquire concerning the propriety of the release or transfer. Nothing in this subsection shall prevent the transfer of a resident to a hospital or other medical facility for necessary medical treatment, or emergency transfer of a resident to a mental health facility, provided such emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within twenty-four (24) hours of an emergency medical or psychiatric transfer, notice shall be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(4) If the professional person in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least fifteen (15) days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the future habilitation plan which is anticipated by the professional person.

(5) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner set out in section 38-1208. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still

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in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based habilitation, or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition. If the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a residential facility which does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility.

Section 10. There is a new R.C.M. section numbered 38-1210 that reads as follows:

38-1210. Venue for hearing. Hearings held pursuant to this act shall be held in the district court for the district where the respondent resides. Except that at the request of any party, or the professional person who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment or habilitation in a residential facility, or is undergoing community-based evaluation, treatment or habilitation. The cost of any hearing held pursuant to this act shall be born by the county where the respondent resides.

Section 11. There is a new R.C.M. section numbered 38-1211 that reads as follows:

38-1211. Appeal. Any order issued by a court after a hearing held pursuant to any provision of this act may be appealed to the Montana supreme court in the same manner as for civil appeals generally.

Section 12. There is a new R.C.M. section numbered 38-1212 that reads as follows:

38-1212. Choice of professional person. Whenever evaluation by a professional person is ordered by a court pursuant to any provision of this act, the person being evaluated, his parents or guardian shall have a reasonable choice of a professional person qualified to perform such service.

Section 13. There is a new R.C.M. section numbered 38-1213 that reads as follows:

38-1213. Professional person to attend hearing. In any hearing held pursuant to this act which involves consideration of the recommendation and report of a professional person, the professional person who made the recommendation and report shall be present at the hearing and subject to cross-examination.

Section 14. There is a new R.C.M. section numbered 38-1214 that reads as follows:

38-1214. Social summary. In any hearing held pursuant to this act the court may request the county welfare department to prepare a social summary of the respondent for use by the court.

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Section 15. There is a new R.C.M. section numbered 38-1215 that reads as follows:

38-1215. Limitation on who takes treatment. No person who has reached the age of majority shall be compelled against his will to undertake a course of treatment and habilitation solely because he is developmentally disabled, but only if such disability causes him to be unable to protect his life and health.

Section 16. There is a new R.C.M. section numbered 38-1216 that reads as follows:

38-1216. Emergency admission. The parents, guardian, the person himself, or a professional person may admit a person believed to be developmentally disabled to a residential facility on an emergency basis when necessary to protect the person from death or serious bodily harm. However, if requested by the parents, guardian or the person admitted on an emergency basis, a petition as set out in section 38-1205 shall be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the professional person assigned by the court to conduct the examination and inquiry shall report back to the court on the next judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility shall be allowed only on order of the court when necessary to protect the respondent from death or serious bodily harm. In no case shall an emergency admission to a residential facility continue for longer than thirty (30) days without subsequent proceedings before the court.

Section 17. There is a new R.C.M. section numbered 38-1217 that reads as follows:

38-1217. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person admitted to a residential facility for an extended course of habilitation shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for habilitation, evaluation or care.

(2) Whenever any person is admitted to a residential facility for a period of more than thirty (30) days, for an extended course of habilitation, the court ordering the admission may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section shall terminate upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) Any person who has been admitted to a residential facility pursuant to this act shall be automatically restored upon the termination of the admission to all of his civil and legal rights which may have been

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lost when he was admitted. This subsection shall not affect, however, any guardianship or conservatorship created independently of the admission proceedings, according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Any person who leaves a residential facility following a period of evaluation and habilitation shall be given a written statement setting forth the substance of this subsection.

(4) Any person admitted to a residential facility prior to the effective date of this act shall enjoy all the rights and privileges of a person admitted after the effective date of this act.

Section 18. There is a new R.C.M. section numbered 38-1218 that reads as follows:

38-1218. Placement in a nonstate facility. (1) If a person is admitted to a residential facility under the provisions of this act and is eligible for hospital care, treatment or habilitation by an agency of the United States, and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Boulder River school and hospital with respect to detention, custody, transfer and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted, and to determine the necessity for continuance of their admission.

(2) Consistent with other provisions of this act, a person admitted to a residential facility under this act for a period more than thirty (30) days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to a residential facility located outside the state, if the out-of-state facility agrees to receive the person, provided, however that no such commitment or transfer shall be for a longer period of time than is permitted within the state. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons admitted to a residential facility under the provisions of this act out of Montana or under the laws of another jurisdiction into Montana shall be governed by the provisions of the interstate compact on mental health.

Section 19. There is a new R.C.M. section numbered 38-1219 that reads as follows:

38-1219. Fingerprinting. No person admitted to or in a residential facility shall be fingerprinted unless required by other provisions of law.

Section 20. There is a new R.C.M. section numbered 38-1220 that reads as follows:

38-1220. Photographs. (1) A person admitted to a residential facility may be photographed upon admission for identification and the adminis-

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trative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical or nonhabilitative photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court.

Section 21. There is a new R.C.M. section numbered 38-1221 that reads as follows:

38-1221. Rights while in a residential facility. Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents shall have a right to dignity, privacy and humane care.

(2) Residents shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents shall have the same rights and access to private telephone communication as patients at any public hospital, except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued. Residents shall have an unrestricted right to visitation, except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents shall have a right to receive suitable educational services regardless of chronological age, degree of retardation or accompanying disabilities or handicaps.

(5) Each resident shall have an adequate allowance of neat, clean, suitably fitting and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the resident's throughout his stay in the institution. Clothing both in amount and type shall make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(6) Each resident shall have the right to keep and use his own personal possessions except insofar as such clothes or personal possessions may be determined to be dangerous, either to himself or to others, by a professional person.

(7) A resident has a right to a humane physical environment within the residential facilities. These facilities shall be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

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(a) Regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean and attractive condition shall be developed and implemented.

(b) Pursuant to an established routine maintenance and repair program, the physical plant shall be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents.

(c) The physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility shall meet such provisions of the life safety code of the national fire protection association as are applicable to it.

(d) There must be special facilities for nonambulatory residents to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory residents to communicate their needs to staff.

(8) Residents shall have a right to receive prompt and adequate medical treatment for any physical ailments and for the prevention of any illness or disability. Such medical treatment shall meet standards of medical practice in the community.

(9) Corporal punishment shall not be permitted.

(10) The opportunity for religious worship shall be accorded to each resident who desires such worship. Provisions for religious worship shall be made available to all residents on a nondiscriminatory basis. No individual shall be compelled to engage in any religious activities.

(11) Residents shall have a right to a nourishing, well-balanced diet. The diet for residents shall provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the resident, or his parents or guardian or next of kin, or the responsible person appointed by the court, in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(12) Residents shall have a right to regular physical exercise several times a week. It shall be the duty of the facility to provide both indoor and outdoor facilities and equipment for such exercise. Residents shall have a right to be outdoors daily in the absence of contrary medical considerations.

(13) Residents shall have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex, except where a professional person responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons therefor. The order must be renewed monthly if the restriction is to be continued.

Section 22. There is a new R.C.M. section numbered 38-1222 that reads as follows:

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38-1222. Other rights while in a residential facility. (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education and care, suited to their needs, regardless of age, degree of retardation or handicapping condition. Each resident has a right to a habilitation program which will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residence;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within thirty (30) days of his admission to a residential facility, each resident shall have an evaluation by appropriate specialists for programming purposes.

(4) Each resident shall have an individualized habilitation plan formulated by the facility. This plan shall be developed by appropriate professional persons and implemented as soon as possible but no later than fourteen (14) days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this act, shall commence promptly upon the resident's admission. Each individualized habilitation plan shall contain:

(a) a statement of the nature of the specific limitations and specific needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of, and an explanation for, the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professional persons and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, including criteria for discharge and a projected date for discharge.

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(5) As part of his habilitation plan, each resident shall have an individualized post-institutionalization plan. This plan shall be developed by a professional person who shall begin preparation of such plan upon the resident's admission to the institution and shall complete such plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, shall be consulted in the development of such plan and shall be informed of the content of such plan.

(6) In the interests of continuity of care, one professional person shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. This professional person shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. In addition, six (6) months after admission and at least annually thereafter, each resident shall receive a comprehensive psychological, social, educational and medical diagnosis and evaluation, and his habilitation plan shall be reviewed by an interdisciplinary team of no less than two (2) professional persons and such resident care workers as are directly involved in his habilitation and care. A habilitation plan shall be reviewed monthly.

(8) Each resident discharged to the community shall have a program of transitional habilitation assistance.

(9) The professional person in charge of the residential facility shall report in writing to the parents or guardian of the resident, or the responsible person, at least every six (6) months on the resident's educational, vocational and living skills progress and medical condition. Such report shall also state any appropriate habilitation program which has not been afforded to the resident because of inadequate habilitation resources.

(10) The parents or guardian of each resident, or the responsible person appointed by the court, shall promptly upon resident's admission receive a written copy of all the above standards for adequate habilitation. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy.

Section 23. There is a new R.C.M. section numbered 38-1223 that reads as follows:

38-1223. Maintenance of records. Complete records for each resident shall be maintained and shall be readily available to professional persons and to the resident care workers who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records shall be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by

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the resident, if such resident is capable of giving informed consent, or by his parents or guardian or the responsible person, shall be permitted access to the resident's records. These records shall include:

(1) identification data, including the resident's legal status;

(2) the resident's history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior institutionalization;

(3) the resident's grievances if any;

(4) an inventory of the resident's life skills;

(5) a record of each physical examination which describes the results of the examination;

(6) a copy of the individual habilitation plan and any modifications thereto and an appropriate summary which will guide and assist the resident care workers in implementing the resident's program;

(7) the findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;

(8) a copy of the post-institutionalization plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status;

(10) a summary of each significant contact by a professional person with a resident;

(11) a summary of the resident's response to his program, prepared by a professional person involved in the resident's habilitation and recorded at least monthly. Such response, wherever possible, shall be scientifically documented;

(12) a monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(13) a signed order by a professional person for any physical restraints;

(14) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(15) a summary of family visits and contacts;

(16) a summary of attendance and leaves from the facility;

(17) a record of any seizures, illnesses, treatments thereof, and immunizations.

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Section 24. There is a new R.C.M. section numbered 38-1224 that reads as follows:

38-1224. Training for resident case workers. All resident care workers who have not had prior clinical experience in a residential facility for habilitation of the developmentally disabled shall have suitable orientation training. Staff members on all levels shall have suitable, regularly scheduled in-service training. Each resident care worker shall be under the direct professional supervision of a professional person.

Section 25. There is a new R.C.M. section numbered 38-1225 that reads as follows:

38-1225. Abuse of residents prohibited. Every residential facility shall prohibit mistreatment, neglect or abuse in any form of any resident. Alleged violations shall be reported immediately to the professional person in charge of the facility and there shall be a written record that:

(1) each alleged violation has been thoroughly investigated and findings stated;

(2) the results of such investigation are reported to the professional person in charge of the facility within twenty-four (24) hours of the report of the incident. Such reports shall also be made to the mental disabilities board of visitors monthly and to the developmental disabilities advisory council at its next scheduled public meeting. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.

Section 26. There is a new R.C.M. section numbered 38-1226 that reads as follows:

38-1226. Medication for residents. Residents have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The professional person in charge of the facility and the attending physician shall be responsible for all medication given or administered to a resident. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. At least weekly an attending physician shall review the drug regimen of each patient under his care. All prescriptions shall be written with a termination date, which shall not exceed thirty (30) days. Medications shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the resident's treatment program.

Section 27. There is a new R.C.M. section numbered 38-1227 that reads as follows:

38-1227. Hazardous treatment — physical restraint. (1) Residents of a residential facility shall have a right not to be subjected to any unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent special-

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ists and legal counsel. Such proposed procedures shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought.

(2) Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. Restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint shall be applied only if alternative techniques have failed and only if such restraint imposes the least possible restriction consistent with its purpose. Only a professional person may authorize the use of restraints. Orders for restraints by a professional person shall be in writing and shall not be in force for longer than twelve (12) hours. Whenever physical restraint is ordered suitable provision shall be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for non-therapeutic purposes, shall not be employed. Legitimate "time out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli shall be reviewed and approved by the mental disabilities board of visitors and shall be conducted only with the express and informed consent of the affected resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs shall be conducted only under the supervision of and in the presence of a professional person who has had proper training in such techniques.

(5) No resident shall be subjected to a behavior modification program which attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

(6) Electric shock devices shall be considered a research technique for the purpose of this act. Such devices shall only be used in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of such devices shall be subject to the conditions prescribed by this act for experimental research generally and shall be used only under the direct and specific order of the professional person in charge of the residential facility.

Section 28. There is a new R.C.M. section numbered 38-1228 that reads as follows:

38-1228. Experimental research. Residents of a residential facility shall have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such proposed research

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shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare for projects supported by that agency.

Section 29. There is a new R.C.M. section numbered 38-1229 that reads as follows:

38-1229. Resident labor. The following rules shall govern resident labor:

(1) No resident shall be required to perform labor which involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(2) No resident shall be involved in the care (feeding, clothing, bathing), training or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(3) Residents may be required to perform vocational training tasks which do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than three (3) months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

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(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(5) If any resident performs habilitative labor which involves the operation and maintenance of a facility, but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature such as the making of one's own bed.

(7) Deductions or payments for care and other charges shall not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing shall be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work.

Section 30. There is a new R.C.M. section numbered 38-1230 that reads as follows:

38-1230. Evaluation of residents. Within one (1) year of the effective date of this act, each resident governed by the provisions of this act shall be evaluated as to his mental, emotional, social, and physical condition. Such evaluation or reevaluation shall be conducted by an interdisciplinary team of professional persons who shall use professionally recognized tests and examination procedures. Each resident's parents or guardian, next of kin or legal representative or the responsible person appointed by the court shall be contacted and his readiness to make provisions for the resident's care in the community shall be ascertained. Each resident shall be returned to his family, if adequately habilitated, or assigned to the least restrictive habilitation setting. Where necessary, the professional person in charge of the resident shall petition the court to appoint a responsible person.

Section 31. There is a new R.C.M. section numbered 38-1231 that reads as follows:

38-1231. Residential institution to meet standards. No person shall be admitted to any publicly supported residential institution caring for developmentally disabled persons unless such institution meets the standards prescribed by this act.

Section 32. There is a new R.C.M. section numbered 38-1232 that reads as follows:

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38-1232. Mental disabilities board of visitors — duties. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five (5) persons at least three (3) of whom shall not be professional persons and at least one (1) of whom shall be a representative of an organization concerned with the care and welfare of the developmentally disabled. No one may be a member of the board who is an agent or employee of the department of institutions or of any residential facility affected by this act. If a board of similar title and structure is created in any act concerning the treatment of the mentally ill, then one (1) board shall be created to perform the functions set out in both acts and the board so created shall include at least one (1) representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this act.

The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare. No experimental research project involving persons admitted to any residential facility affected by this act shall be commenced unless it is approved by the mental disabilities board of visitors. The board shall investigate all cases of alleged mistreatment of a resident.

(3) The board shall, at least annually, inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(4) The board shall inspect the file of each person admitted to a residential facility pursuant to this act to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation or other extraordinary measures.

(5) The board may assist any patient at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(6) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the parents or guardian of any patient involved, the next of kin, if known, the responsible person appointed by the court for any patient involved, the profes-

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sional person in charge of the facility, the director of the department of institutions and the district court which has jurisdiction over the facility.

(7) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the Montana legislature concerning the status of the residential facilities and habilitation programs which it has inspected.

(8) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this act.

Section 33. There is a new R.C.M. section numbered 38-1233 that reads as follows:

38-1233. Transfer of person to residential facility. If any person is a patient in a mental health facility and the professional person in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be admitted to a residential facility, then the professional person shall commence proceedings consistent with the procedures set forth in this act for admissions generally to effect such admission.

Section 34. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 35. Sections 80-2303 through 80-2309, 80-2312, and 38-301 through 38-303, R.C.M. 1947, are repealed.

Approved April 18, 1975.

CHAPTER NO. 469

AN ACT RELATED TO THE SCHOOL TRANSPORTATION REIMBURSEMENT RATE SCHEDULES; PROVIDING AN INCREASE OF THE BUS PER MILE REIMBURSEMENT SCHEDULES; AND AMENDING SECTION 75-7018, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7018, R.C.M. 1947, is amended to read as follows:

"**75-7018. Schedule of maximum reimbursement by bus mileage rates.** The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates shall not limit the amount which a district may budget in its transportation fund budget

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in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. The operation of any vehicle reimbursed under the rate provisions of this schedule shall be a school bus, as defined by this Title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(1) The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees boarding such school bus on an approved route is not less than seventy-five per cent (75%) of its rated capacity:

(a) thirty-five cents ($.35) per bus mile for a school bus with a rated capacity of not less than twelve (12) but not more than *fifty (50)* children; and

(b) when the rated capacity is more than *fifty (50)* children, an additional *two cents ($.02)* per bus mile for each additional child in the rated capacity in excess of *fifty (50)* shall be added to a base rate of *thirty-five cents ($.35)* per bus mile.

(2) When the number of eligible transportees boarding a school bus on an approved route is less than seventy-five per cent (75%) of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees boarding the school bus on such route;

(b) multiply the number determined in subsection (2) (a) by twenty-five per cent (25%) and round-off to the nearest whole number;

(c) add the amount calculated in subsection (2) (b) to the number determined in subsection (2) (a) to determine the adjusted rated capacity for the bus; and

(d) use the adjusted rated capacity determined in subsection (2) (c) as the rated capacity of such bus to determine the rate per bus mile traveled from the rate schedule in subsection (1) above.

The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of education."

Approved April 18, 1975.

CHAPTER NO. 470

AN ACT TO AMEND SECTION 75-7019, R.C.M. 1947, RELATING TO THE PROCEDURE FOR DETERMINING THE MAXIMUM REIMBURSEMENT FOR INDIVIDUAL TRANSPORTATION AND RELATING TO THE RATES OF SUCH REIMBURSEMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7019, R.C.M. 1947, is amended to read as follows:

"**75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school, or to schools located within three (3) miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by two (2), subtracting six (6) miles from the product so obtained, and multiplying the difference by twelve cents ($.12) provided that:

(a) if two (2) or more eligible transportees are transported by a parent or guardian to two (2) or more schools located within three (3) miles of one another, and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts.

(b) if two or more eligible transportees are transported by a parent or guardian to two (2) or more schools located more than three (3) miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school.

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within three (3) miles of one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by two (2), subtracting three (3) miles from the product so obtained and multiplying the difference by twelve cents ($.12) provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally, and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads or other special

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circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. *The increased rate shall be one and one-half (1 ½) times the rate prescribed in subsection (1) above.*

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. *The per diem rate for room and board shall be three dollars ($3) for one eligible transportee and one dollar and fifty cents ($1.50) for each additional eligible transportee of the same household.*

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study; provided that the course of instruction is approved by the trustees and supervised by the district.

(6) The schedules provided in this section shall not be altered by any authority other than the *legislature* of the state of Montana."

Approved April 18, 1975.

CHAPTER NO. 471

AN ACT TO EXCLUDE FROM CLASS SEVEN PROPERTY TAX CLASSIFICATION ANY NEW INDUSTRIAL PLANT WHICH WILL CREATE AN ADVERSE IMPACT ON EXISTING STATE, COUNTY, OR MUNICIPAL SERVICES; AND BROADENING THE DEFINITION OF NEW INDUSTRIAL PROPERTY; AMENDING SECTION 84-301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of

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the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; *industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 standard industrial classification manual, prepared by the United States office of management and budget;* and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. *New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new indus-*

trial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount of prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Air pollution control equipment as defined in section 69-3923.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under

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this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. All property not included in the eight (8) preceding classes."

Approved April 18, 1975.

CHAPTER NO. 472

AN ACT TO AUTHORIZE THE BOARD OF LAND COMMISSIONERS TO EXCHANGE STATE LAND FOR PRIVATE LAND SUBJECT TO CERTAIN REQUIREMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 81-307 that reads as follows:

81-307. Exchange of state land for private land. (1) The board is authorized to exchange state land for private land, provided that the private land is of equal or greater value than the state land and as closely as possible, equal in area. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under section 81-2704, R.C.M. 1947.

(2) Prior to completing any such exchange, a public hearing shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised during any such hearing, the board shall make findings of fact responding to such objections and explaining their action.

(3) If the requirements of subsections (1) and (2) are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water.

(4) No such exchange shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which the state would receive under the proposed exchange.

Approved April 18, 1975.

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CHAPTER NO. 473

AN ACT TO AMEND SECTION 84-1831, R.C.M. 1947, TO DELETE LIQUID PETROLEUM GASES AS A SPECIAL FUEL; TO AMEND SECTION 84-1832.1, R.C.M. 1947, TO ELIMINATE THE SEVEN CENTS ($.07) TAX A GALLON ON LIQUID PETROLEUM GASES USED TO PROPEL MOTOR VEHICLES UPON THE PUBLIC HIGHWAYS AND STREETS OF THIS STATE, AND TO IMPOSE A LICENSE TAX IN LIEU OF A FUEL TAX ON EACH AND EVERY VEHICLE SELF-PROPELLED UPON THE PUBLIC HIGHWAYS AND STREETS OF THIS STATE USING LIQUID PETROLEUM GASES; AND TO PROVIDE COLLECTION OF THE LICENSE TAX BY THE GROSS VEHICLE WEIGHT DIVISION OF THE DEPARTMENT OF HIGHWAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1831, R.C.M. 1947, is amended to read as follows:

"**84-1831. Definitions.** As used in this act, the following definitions shall apply:

(a) "Person" means and includes any person, firm, association, joint-stock company, syndicate, copartnership, or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, as applied to a firm, association, syndicate, or copartnership, means and includes the partners or members thereof, and as applied to joint-stock companies and corporations, the officers thereof.

(b) "Department" means the state department of revenue.

(c) As used in this act, "public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been, or shall be, built and maintained with appropriated funds of the United States and which have been, or shall be, built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain, or have been acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(d) "Motor vehicle" means any vehicle which is self-propelled upon the highways.

(e) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than forty-six degrees (46) A.P.I. (American Petroleum Institute) gravity test *except liquid petroleum gas*, when actually sold for use in motor vehicles propelled upon the public highways or streets within the state of Montana.

(f) "Use" means either the receipt, delivery or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor

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vehicle not owned or controlled by him, while such vehicle is within this state, or the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state.

(g) "Special fuel dealer" means any person in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him. For this purpose the term "fuel supply tank or tanks" does not include cargo tanks even though fuel is withdrawn directly therefrom for propulsion of the vehicle.

(h) "Special fuel user" means any person other than a county, incorporated city or town or school district of this state, who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(i) "Bond" means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the department may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the department."

Section 2. Section 84-1832.1, R.C.M. 1947, is amended to read as follows:

"84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when. The state department of revenue shall, under the provisions of rules and regulations issued by the department, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to nine cents ($.09) for each gallon of diesel fuel or other volatile liquid, *except liquid petroleum gas,* of less than forty-six degrees (46) A.P.I. (American Petroleum Institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivision."

Section 3. There is a new R.C.M. section numbered 84-1862 that reads as follows:

84-1862. Tax to be collected on motor vehicles self-propelled by liquid petroleum gases. The department of highways shall, under the rules issued by the department, collect or cause to be collected from owners or operators of motor vehicles powered by liquid petroleum gases

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an annual license tax fee on each such vehicle according to the following schedule:

(1) Passenger cars and pickups, whose licensed gross vehicle weight is ten thousand (10,000) pounds or less, sixty dollars ($60).

(2) Motor trucks and truck tractors whose licensed gross vehicle weight is over ten thousand (10,000) pounds and less than eighteen thousand (18,000) pounds, eighty dollars ($80).

(3) Motor trucks and truck tractors, whose licensed gross vehicle weight is eighteen thousand (18,000) pounds or more and less than forty-eight thousand (48,000) pounds, two hundred dollars ($200).

(4) Motor trucks and truck tractors, whose licensed gross vehicle weight is forty-eight thousand (48,000) pounds or more, one thousand dollars ($1,000).

Upon payment of the tax required by this section, the department of highways shall provide a prominent sticker to be displayed on each vehicle, which sticker shall be valid for a period beginning January 1 and ending December 31 of each calendar year.

Section 4. There is a new R.C.M. section numbered 84-1863 that reads as follows:

84-1863. Sticker and fee nontransferable. The identifying sticker and license fee paid for each vehicle shall not be transferable on the sale or change of ownership.

Section 5. There is a new R.C.M. section numbered 84-1864 that reads as follows:

81-1864. Violations and penalties. Any person violating any provision of this act is guilty of misdemeanor, and upon conviction is punishable by a fine of not less than one hundred dollars ($100) nor more than two thousand dollars ($2,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. The fine and imprisonment provided in this section shall be in addition to any other penalty imposed by any other provision in this act.

Section 6. There is a new R.C.M. section numbered 84-1865 that reads as follows:

84-1865. Disposition of funds. All taxes collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the department of highways.

Section 7. If House Bill No. 198 and this bill are each enacted into law in 1975, it is the intent of the legislature that section 2 of this act controls the taxation of liquid petroleum gas under section 84-1832.1.

Approved April 18, 1975.

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CHAPTER NO. 474

AN ACT TO EXTEND THE SCOPE OF THE OPEN MEETINGS LAW; AMENDING SECTIONS 82-3402 AND 94-7-401, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-3402, R.C.M. 1947, is amended to read as follows:

"**82-3402. Meetings of public agencies to be open to public —exceptions.** All meetings of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organization or agencies supported in whole or in part by public funds, or expending public funds, at which any action is taken by such public governmental body, board, bureau, commission or agency of the state or any political subdivision of the state shall be open to the public. *Provided, however, the presiding officer of any meeting may close the meeting during the time any of the following items are discussed, if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure:*

(1) The disciplining of any public officer or employee, or any hearing on, or of, a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.

(2) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.

(3) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.

(4) Law enforcement, crime prevention, probation or parole."

Section 2. Section 94-7-401, R.C.M. 1947, is amended to read as follows:

"**94-7-401. Official misconduct.** (1) A public servant commits the offense of official misconduct when, in his official capacity, he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction; or

(b) knowingly performs an act in his official capacity which he knows is forbidden by law; or

(c) with the purpose to obtain advantage for himself or another, he performs an act in excess of his lawful authority; or

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law*; or*

(e) knowingly conducts a meeting of a public agency in violation of section 82-3402.

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(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section, and any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) *may* be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all back pay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal."

Approved April 18, 1975.

CHAPTER NO. 475

AN ACT TO REQUIRE THE OWNER OF A MOBILE HOME TO PAY THE PROPERTY TAX TWICE A YEAR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4202, R.C.M. 1947, is amended to read as follows:

"**84-4202. Duty of treasurer.** The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of the report prescribed by section 84-4201, R.C.M. 1947, to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for

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all taxes on personal property remaining uncollected by reason of the willful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lien holder, if any.

The owner of a mobile home or house trailer which is not taxed as an improvement, as improvements are defined in section 84-101, shall pay the personal property tax in semiannual installments on or before January 1 and July 1 each year. The department of revenue shall issue tax-paid stickers to the county treasurers for each six-month period. The treasurers shall issue such stickers to the owners of mobile homes and house trailers upon payment of the taxes thereon, and an owner shall then display the sticker which shall be visible from the exterior of the mobile home or house trailer. No mobile home movement permit provided in section 84-6606 may be issued unless both semiannual installments have been paid to the county treasurer."

Approved April 18, 1975.

CHAPTER NO. 476

AN ACT CREATING THE BOARD OF LANDSCAPE ARCHITECTS; AND PRESCRIBING ITS POWERS AND DUTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-3801 that reads as follows:

66-3801. Short title. This act shall be known and cited as the "Landscape Architect Registration and Licensing Act".

Section 2. There is a new R.C.M. section numbered 66-3802 that reads as follows:

66-3802. Purpose. The purpose of this act is to safeguard life, health, property, and to promote the public welfare by requiring that only prop-

erly qualified persons shall be licensed to practice landscape architecture in this state.

Section 3. There is a new R.C.M. section numbered 66-3803 that reads as follows:

66-3803. Definitions. As used in this act:

(1) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this act.

(2) "Practice of the profession of landscape architecture" means performing services in connection with the analysis or development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches or environment for structures or other improvements, natural drainage and the consideration and determination of inherent problems of the land relating to the erosion, wear and tear, blight or other hazards. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined herein but shall not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or final land plats for official approval or recording.

(3) "Experience" means full-time employment as a landscape architect or doing landscape architectural work under the supervision of a registered landscape architect or a landscape architect qualified for registration in Montana. All experience is subject to approval by the board.

(4) "Education" means time spent as a student enrolled in a college or school curriculum of landscape architecture accredited by the American Society of Landscape Architects, and other college or university training the board may approve.

(5) "Training" means a period of experience and/or education of at least six (6) years as defined herein.

(6) "Board" means the board of landscape architects.

(7) "Department" means the department of professional and occupational licensing.

Section 4. There is a new R.C.M. section numbered 66-3804 that reads as follows:

66-3804. Application and practice. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this act.

Section 5. There is a new R.C.M. section numbered 66-3805 that reads as follows:

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66-3805. Qualifications. Prior to being licensed as a landscape architect each applicant shall submit evidence to the board that his training includes at least six (6) years of experience and/or education as defined herein:

(1) Six (6) years of experience of grade and character satisfactory to the board shall be acceptable.

(2) One (1) academic year of education may be substituted for one (1) year of actual practical experience up to a maximum of five (5) academic years in landscape architecture. Experience during a year of education may not be applied toward the total training period of six (6) years. Each applicant shall have completed at least one (1) year's experience.

Section 6. There is a new R.C.M. section numbered 66-3806 that reads as follows:

66-3806. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect except the original board and those registered under the grandfather clause is required to establish by written and/or oral examination his competency to practice the profession of landscape architecture. The type of examinations that will be given shall be determined by the board.

Section 7. **Grandfather clause.** At any time within one (1) year after this act becomes effective, upon application therefor and payment of the application and certificate fee, the board shall issue a certificate of registration without oral or written examination to any practicing landscape architect of good character, who qualifies under the provisions of section 66-3805, who shall submit under oath evidence satisfactory to the board that he was practicing landscape architecture at the time this act became effective, and has had responsible charge of work of character satisfactory to the board.

Section 8. There is a new R.C.M. section numbered 82A-1602.30 that reads as follows:

82A-1602.30. Board created. (1) There is a board of landscape architects. The board consists of five (5) members of which at least three (3) must be landscape architects. Members of the board shall be appointed by the governor and must be residents of this state. At least three (3) shall have the qualifications of landscape architects required by this act, and, except for the first appointed members, three (3) members must be licensed landscape architects. The board is allocated to the department of professional and occupational licensing for administrative purposes only as prescribed in section 82A-108.

(2) The terms of the members of the board first appointed are as follows:

(a) one member for one (1) year;

(b) two members for two (2) years;

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(c) two members for three (3) years.

Future terms are for four (4) years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than eight (8) consecutive years.

(3) The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties, and may hear contested cases arising under this act.

(4) The board shall elect annually, at its first meeting of every calendar year, from its members, a president who may appoint a secretary. The secretary may or may not be a member of the board. In carrying out the provisions of this act, all members of the board shall receive only reimbursement for travel and actual expenses incurred in the performance of board duties.

Section 9. There is a new R.C.M. section numbered 66-3807 that reads as follows:

66-3807. License fees — expiration — reciprocity. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then current fee, and upon approval by the board. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration within a period of sixty (60) days may be reinstated only on reexamination. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(3) All fees received under the provisions of this act shall be deposited in an earmarked revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the act, subject to section 82A-1603(6).

(4) The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country whose requirements for licensure are substantially equivalent to the requirements of this state and which extends the same privilege of reciprocity to landscape architects from this state.

Section 10. There is a new R.C.M. section numbered 66-3808 that reads as follows:

66-3808. Exemptions. (1) None of the provisions of this act prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this act apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman,

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plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used, except that no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this act.

(3) This act does not apply to architects, professional engineers, and land surveyors licensed to practice their respective professions.

(4) None of the provisions of this act shall apply to any person performing any of the services mentioned in this act upon his own property.

(5) None of the provisions of this act shall require the hiring of a landscape architect.

Section 11. There is a new R.C.M. section numbered 66-3809 that reads as follows:

66-3809. Registrant status. (1) All certificates of licensing shall be issued to natural persons only but nothing contained in this act prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if such name consists of:

(a) the names of two (2) or more landscape architects.

(b) the names of one (1) or more landscape architects and one (1) or more professional engineers, architects, or planners.

(3) Any person applying to the licensing official of any county or city for a business license to practice landscape architecture shall at the time of such application exhibit to such licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented.

Section 12. There is a new R.C.M. section numbered 66-3810 that reads as follows:

66-3810. Qualifications for practice — seal. (1) No person may use the designation "landscape architect" or "landscape architecture", or advertise any title or description tending to convey the impression that he is a landscape architect, or practicing landscape architecture, unless such person is a licensed landscape architect with the board. Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana", and such other words or figures as the board considers necessary. All drawings and title pages of specifications, prepared by such landscape architect or under the super-

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vision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed land surveyor.

Section 13. There is a new R.C.M. section numbered 66-3811 that reads as follows:

66-3811. Disciplinary proceedings. The board may revoke or suspend the license of any landscape architect upon the following grounds: (1) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this act;

(2) conviction of a felony by a court of competent jurisdiction, however, the right to a revoked or suspended license is regained upon termination of state supervision over the licensee;

(3) gross incompetency;

(4) fraud or deceit in the performance of official duties;

(5) for willful violation of any of the provisions of this act or any of the rules promulgated by the board under the authority of this act.

The board may reinstate any revoked or suspended certification upon such terms as it may impose.

Section 14. There is a new R.C.M. section numbered 66-3812 that reads as follows:

66-3812. Violations — penalties. (1) It shall be unlawful for any person to:

(a) offer to practice or hold himself out as entitled to practice landscape architecture, unless duly licensed and registered under this act;

(b) present as his own the license of another;

(c) give false or forged evidence to the board or any member thereof in obtaining a license;

(d) falsely impersonate any other practitioner, of like or different name;

(e) otherwise violate any of the provisions of this act.

(2) A person convicted of violating any of the provisions of this act shall be fined not to exceed five hundred dollars ($500). Each violation is considered a separate offense for purposes of this subsection.

Section 15. There is a new R.C.M. section numbered 66-3813 that reads as follows:

66-3813. Prosecution of violations. All violations of this act when reported to the board and duly substantiated by affidavits or other satisfactory evidence shall be investigated by it, and if the allegation is found to be true, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

Approved April 18, 1975.

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CHAPTER NO. 477

AN ACT RELATING TO THE ISSUE AND SALE BY THE STATE BOARD OF EXAMINERS OF GENERAL OBLIGATION HIGHWAY BONDS IN A SUM NOT EXCEEDING SEVEN MILLION FOUR HUNDRED THOUSAND DOLLARS ($7,400,000) FOR THE PURPOSE OF ACQUIRING A NECESSARY SITE FOR AND ERECTING AND EQUIPPING A DEPARTMENT OF HIGHWAYS HEADQUARTERS BUILDING AND COMPLEX; PLEDGING AND APPROPRIATING A PORTION OF NET PROCEEDS FROM GASOLINE TAXATION TO A SPECIAL SINKING FUND ACCOUNT FOR THE PAYMENT AND SECURITY OF SUCH BONDS; RESERVING TO THE STATE THE POWER OF ISSUING ADDITIONAL HIGHWAY BONDS PAYABLE FROM THE SINKING FUND ACCOUNT WHEN AUTHORIZED BY LAW, OR OF REFUNDING SUCH BONDS; AMENDING SECTION 32-2601, R.C.M. 1947, AND REPEALING CHAPTER 377, LAWS OF MONTANA 1969, AND SECTIONS 1 THROUGH 5, CHAPTER 356, LAWS OF MONTANA 1971; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. The state board of examiners is authorized to issue and sell general obligation highway bonds of the state of Montana for the purpose of acquiring a suitable site for and erecting and equipping a department of highways headquarters building and complex at or near Helena, Montana, to replace the present laboratory and administration buildings which are declared to be inadequate for such purpose. The full faith and credit and taxing powers of the state of Montana shall be pledged for the payment of all bonds issued pursuant to this chapter.

Section 2. Upon the sale of the bonds, the department of administration, acting under the supervision and with the approval of the board of examiners, as provided in chapter 33 of Title 82 of the Revised Codes of Montana, 1947, is empowered and directed to acquire a site for and to proceed with the erection and equipping of a building of suitable construction and design for use as a headquarters building and necessary supporting structures for laboratories and storage for the Montana department of highways.

Section 3. The aggregate amount of highway bonds authorized by this act for the purpose expressed in section 1, shall not exceed the sum of seven million four hundred thousand dollars ($7,400,000). The state reserves the privilege of issuing additional highway bonds, when and if authorized by law, for this purpose and for any other purpose for which money derived from the sources described in section 6, Article VIII of the constitution is authorized by that section to be expended. The state board of examiners is also authorized to issue additional highway bonds for the purpose of refunding bonds issued pursuant to or as contemplated in this chapter, in amounts not exceeding the principal amount of the bonds

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refunded, when the board determines that the refunding of any outstanding bonds is in the best interests of the state. All bonds issued for the purposes contemplated in this section shall be payable from the same sinking fund account on a parity as to both principal and interest with the bonds authorized in section 1, provided that in the issuance of each series of such bonds the amount, maturities and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on such bonds then outstanding (except bonds refunded) and on the series so to be issued will not exceed twenty-five percent (25%) of the amount collected during the then next preceding fiscal year from the tax or taxes pledged by law to the sinking fund account at the time of such issuance. The provisions of this section shall not constitute a covenant with the holders of any bonds issued hereunder.

Section 4. Such bonds shall be issued by the board, upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest, maturing at such times not exceeding twenty (20) years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agent of the state of Montana, as the board shall determine, subject to the limitations contained herein.

Section 5. In all other respects, the board is authorized to prescribe the form and terms of the bonds, and shall do whatever is lawful and necessary for their issuance and payment. The board is authorized to employ a fiscal agent to assist it in the performance of its duties hereunder. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the state board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

Section 6. All proceeds of bonds issued hereunder shall be deposited in a separate highway subfund which is created within the bond and insurance clearance fund established by section 79-410, R.C.M. 1947, referred to herein as the "clearance fund account", and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury. The proceeds of the bonds authorized in section 1 shall be used only to pay costs of acquiring land for and erecting and equipping the buildings herein referred to, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislature and said proceeds are appropriated for the purpose of the capital items herein described. The proceeds of any additional bonds authorized as contemplated in section 3, except refunding bonds, shall be used only for purposes authorized under the provisions of section 6, Article VIII of the constitution, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

Section 7. (a) The state pledges and appropriates and directs to be

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credited as received to the sinking fund account, as herein defined, that portion of the net proceeds from the collection of gasoline taxes which may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (b) of this section. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxation. The term "net proceeds", as used herein, means all funds on hand in the treasury of the state as of any date, derived from the collection of the license tax imposed on gasoline distributors by section 84-1847, R.C.M. 1947, enacted by section 3, chapter 369, Laws of 1969, as amended by section 1, chapter 202, and by section 2, chapter 204, Laws of 1971, and by section 90, chapter 516, Laws of 1973, or by any subsequent enactment, less the amount of all refunds of such taxes for which applications have been made pursuant to law but which have not yet been paid or rejected. The term "sinking fund account", as used herein, means a separate highway subfund which is created within the sinking fund established by section 79-410, R.C.M. 1947, and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest thereon when due, so long as any such bonds or interest remain unpaid.

(b) Money in the sinking fund account shall be used first, to pay interest and principal when due on highway bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(c) Money at any time received in the sinking fund account in excess of the principal, interest and reserve requirements stated in subsection (b) shall be transferred by the treasurer to the earmarked revenue fund — highway account. If the balance at any time on hand in the sinking fund account is not sufficient for compliance with subsection (b), the treasurer shall credit to said account an amount sufficient to restore said balance from the next receipts of net proceeds from the collection of gasoline taxes.

Section 8. Section 32-2601, R.C.M. 1947, is amended to read as follows:

"32-2601. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by section 79-410. Subject to that provision, six-tenths of one per cent (.6%) of all money shall be deposited in the state park account in the earmarked revenue fund. All of the

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remainder of the money shall be used and expended by the department of highways on the federal-aid highways in this state selected and designated under the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system, and on the other roads which have been or may be authorized by the laws of Montana, and for collection of the license taxes and the enforcement of the Montana highway code, under Article VIII, section 6 of the constitution of this state. The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with sections 32-2605 through 32-2607; nothing in this act conflicts with those federal-aid highway acts and the rules by which they are administered. The department may enter into *cooperative* agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(2) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds under section 84-1855. The legislature hereby finds as a fact that of all the fuel sold in the state for consumption in internal combustion engines, not less than six-tenths of one per cent (.6%) is used for propelling boats on waterways of this state."

Section 9. Chapter 377, Laws of Montana 1969, and sections 1 through 5, chapter 356, Laws of Montana 1971, are repealed.

Section 10. This act is effective upon its passage and approval.

Approved April 18, 1975.

CHAPTER NO. 478

AN ACT TO PERMIT THE HUMAN RIGHTS COMMISSION TO HIRE ITS OWN STAFF; TO RECEIVE FEDERAL AND PRIVATE FUNDS IN ITS OWN NAME; AND TO MAKE ALL POLICY DECISIONS CONCERNING THE USE OF ITS BUDGET; REPEALING SECTION 82A-1015, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1015, R.C.M. 1947, is amended to read as follows:

"**82A-1015. Commission for human rights.** (1) There is a commission for human rights.

(2) The commission consists of five (5) members appointed by the governor.

(3) The commission is designated as a quasi-judicial board for the purposes of section 82A-112.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in section 82A-108, *except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Section 82A-108(2)(d) shall not apply for purposes of this section.*

Section 2. **Legislative intent.** It is the intent of the legislature that the functions in the department of labor delineated in chapter 24 of Title 41, R.C.M. 1947, pertaining to the status of women, shall, where appropriate, be performed in close cooperation with the commission on human rights."

Approved April 18, 1975.

CHAPTER NO. 479

AN ACT DIRECTING THE ASSIGNMENT OF FUTURE AVAILABLE SPACE IN THE PRESENT QUARTERS OF THE DEPARTMENT OF HIGHWAYS TO STATE DEPARTMENTS ACCORDING TO THE PRIORITIES DETAILED HEREIN.

WHEREAS, House Bill 576, of the Forty-fourth Legislature authorizes the construction of a new complex to house the department of highways; and

WHEREAS, completion of a new building for the department of highways will free the present highways building for use by other state agencies; and

WHEREAS, several state agencies and departments, are in need of centralized working facilities; and

WHEREAS, House Joint Resolution 75, adopted by the 1974 Legislature requested the preparation of a construction project; and

WHEREAS, the spirit and goals of that resolution can be fulfilled without the necessity of a capital outlay; and

WHEREAS, the department of agriculture, the department of livestock, and the department of natural resources and conservation, are in need of centralized working facilities;

WHEREAS, the office space needs of the aforementioned departments are more compatible with the space that will become available in the present quarters of the department of highways; and

WHEREAS, section 82-3308, Revised Codes of Montana, 1947, authorizes the department of administration to assign space in state office buildings to state agencies.

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Be it enacted by the Legislature of the State of Montana:

Section 1. (1) The department of administration shall assign space in the present highways building, upon completion of the new highways complex, to the following state departments and in the following order of priority: first to the departments of agriculture and livestock; and second to the department of natural resources and conservation.

(2) The department shall assign such space with the purpose of maintaining each department's Helena based offices, in their entirety, in a single central location. When considering assignment of space under this act, the department shall insure that those departments with first priority are provided sufficient space for future growth, and that growth of first priority departments, for purposes of space assignment, takes precedence over growth of second and third priority departments.

(3) After assignment to the three named departments any additional available space may be assigned by the department in accordance with section 82-3308.

Approved April 18, 1975.

CHAPTER NO. 480

AN ACT REVISING POLITICAL CAMPAIGN REPORTING REQUIREMENTS; CREATING THE POSITION OF COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES; AUTHORIZING THE COMMISSIONER, IN CONJUNCTION WITH THE COUNTY ATTORNEYS, TO ENFORCE MONTANA'S ELECTION LAWS AND TO REGULATE MONTANA'S CAMPAIGN FINANCE LAWS AS SPECIFIED IN TITLE 23, R.C.M. 1947; SPECIFYING THE POWERS AND DUTIES OF COUNTY ATTORNEYS AND OTHER LOCAL OFFICIALS; REQUIRING CANDIDATES AND POLITICAL COMMITTEES TO DESIGNATE A CAMPAIGN TREASURER AND A CAMPAIGN DEPOSITORY; AUTHORIZING THE CREATION OF A PETTY CASH FUND FOR ALL CANDIDATES AND POLITICAL COMMITTEES; PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING SECTION 23-4701; REPEALING SECTIONS 23-4722, 23-4725, 23-4726, 23-4728.1, 23-4729, 23-4730, 23-4731, 23-4733, 23-4734, 23-4735, 23-4736, 23-4750, 23-4755, 23-4761, 23-4769, 23-4772, AND 23-4775; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 23-4776 that reads as follows:

23-4776. Statement of purpose. It is the purpose of this act to estab-

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lish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana to support or oppose candidates, political committees, or issues, and to consolidate and clarify the authority to enforce the election and campaign finance laws as specified in Title 23, R.C.M. 1947.

Section 2. There is a new R.C.M. section numbered 23-4777 that reads as follows:

23-4777. Definitions. As used in Title 23, chapter 47, R.C.M. 1947:

(1) "Candidate" means an individual who has filed a declaration of nomination, certificate of nomination, or acceptance of nomination for public office as required by law, but does not include a candidate for national office who is subject to the provisions of federal election campaign laws.

(2) "Commissioner" means the commissioner of campaign finances and practices as described in section 23-4785.

(3) "Election" means a general, special, or primary election held to choose a public officer or submit an issue for the approval or rejection of the people.

(4) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection including, but not limited to, initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(5) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(6) "Contribution" means:

(a) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(b) a transfer of funds between political committees;

(c) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee; but

(d) "contribution" does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee, nor meals and lodging provided by individuals in their private residence for a candidate or other individual.

(7) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election, but "expenditure" does not mean:

(a) services, food, or lodging provided in a manner that they are not contributions under this act; nor

(b) payments by a candidate for his personal travel expenses or for food, clothing, lodging, or personal necessities for himself and his family.

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(8) "Anything of value" means any goods that have a certain utility to the recipient that is real and that ordinarily is not given away free, but is purchased.

(9) "Political committee" means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose a candidate or issue or to influence the result of an election by any expenditure.

(10) "Individual" means a human being.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals, or a candidate as defined in subsection (1) of this section.

Section 3. There is a new R.C.M. section numbered 23-4778 that reads as follows:

23-4778. Reports of contributions and expenditures required. (1) Each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this section shall be filed with the commissioner and with the county clerk and recorder of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the county clerk and recorder of the county in which the election is to be held, or if the election is to be held in more than one county, with the clerk and recorder in the county that the commissioner shall specify.

(2) In lieu of all contribution and expenditure reports required by this act, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States, and their political committees, pursuant to the requirements of federal law.

(3) Candidates for a state office filled by a statewide vote of all the voters of Montana, the political committees for such candidates, and political committees organized to support or oppose a statewide issue, shall file reports:

(a) on the tenth day of March and September, in each year that an election is to be held, and on the fifteenth and fifth days next preceding the date on which an election is held, and within twenty-four (24) hours after receiving a contribution of five hundred dollars ($500) or more at any time after the last pre-election report;

(b) not more than twenty (20) days after the date of the election;

(c) on the tenth day of March and September of each year following an election so long as there is an unexpended balance or an expenditure deficit in a campaign account; and

(d) whenever a candidate or political committee finally closes its books.

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(4) Candidates for a state district office, including but not limited to, candidates for the legislature, public service commission, or district court judge, their political committees, and political committees organized to support or oppose district issues, shall file reports:

(a) on the tenth day next preceding the date on which an election is held, and within twenty-four (24) hours after receiving a contribution of one hundred dollars ($100) or more at any time after the last pre-election report;

(b) not more than twenty (20) days after the date of the election;

(c) whenever a candidate or political committee finally closes its books.

(5) Candidates for any other public office, their political committees, and political committees organized to support or oppose local issues, shall be required to file the reports specified in subsection (4) only if the total amount of contributions received or the total amount of funds expended for an election, excluding the filing fee paid by the candidate, exceed five hundred dollars ($500).

(6) All reports required by this section shall be complete as of the date prescribed by the commissioner, which shall not be less than five (5) or more than ten (10) days before the date of filing as specified in subsections (2) through (5) of this section.

(7) The commissioner shall adopt rules and regulations that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue.

(8) Reports filed under this section shall be filed to cover the following time periods:

(a) the initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate as defined in subsection (1) of section 23-4777 until the date prescribed by the commissioner for the filing of the appropriate initial report pursuant to subsections (2) through (5) of this section;

(b) subsequent periodic reports shall cover the period of time from the closing of the previous report to a date prescribed by the commissioner, which shall not be less than five (5) days or more than ten (10) days before the date of filing;

(c) final reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee.

Section 4. There is a new R.C.M. section numbered 23-4779 that reads as follows:

23-4779. What reports must disclose. Each report required by this act shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

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(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made aggregate contributions, other than loans, of twenty-five dollars ($25) or more to the candidate or political committee (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fund-raising events) within the reporting period together with the aggregate amount of those contributions, and the total amount of contributions made by that person;

(3) the total sum of individual contributions made to or for the political committee or candidate and not reported under subsection (2) of this section;

(4) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds together with the amount and dates of all those transfers;

(5) each loan from any person during the reporting period together with the full names and mailing addresses (occupation and principal place of business, if any) of the lender and endorsers, if any, and the date and amount of each loan;

(6) the amount and nature of debts and obligations owed to a political committee or candidates in the form prescribed by the commissioner;

(7) an itemized account of proceeds from:

(a) the sale of tickets to each dinner, luncheon, rally, and other fund-raising events;

(b) mass collections made at such an event; and

(c) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(8) each contribution, rebate, refund, or other receipt not otherwise listed under subsections (2) through (6) of this section during the reporting period;

(9) the total sum of all receipts received by or for the committee or candidate during the reporting period;

(10) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;

(11) the full name and mailing addresses (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses have been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;

(12) the total sum of expenditures made by a political committee or candidate during the reporting period;

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(13) the name and address of each political committee or candidate to which the reporting committee or candidate made any transfer of funds together with the amount and dates of all those transfers;

(14) the name of any person to whom a loan was made during the reporting period, including the full name and mailing address (occupation and principal place of business, if any) of that person, and the full name and mailing address (occupation and principal place of business, if any) of the endorsers, if any, and the date and amount of each loan;

(15) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner;

(16) other information that may be required by the commissioner to fully disclose the sources and disposition of funds used to support or oppose candidates or issues.

Section 5. There is a new R.C.M. section numbered 23-4780 that reads as follows:

23-4780. Reports must be certified as true and correct. (1) A report required by this act to be filed by a candidate or political committee shall be verified as true and correct by the oath or affirmation of the individual filing the report. The individual filing the report shall be the candidate or an officer of a political committee who is on file as an officer of the committee with the commissioner. The oath or affirmation shall be made before an officer authorized to administer oaths.

(2) A copy of a report or statement shall be preserved by the individual filing it for a period of time to be designated by the commissioner.

(3) The commissioner may promulgate rules and regulations regarding the extent to which organizations that are not primarily political committees, but are incidentally political committees shall report their politically related activities in accordance with this act.

Section 6. There is a new R.C.M. section numbered 23-4781 that reads as follows:

23-4781. Campaign treasurer and campaign depository. (1) Each candidate for nomination or election to office and each political committee shall appoint one (1) campaign treasurer. No contribution shall be received or expenditure made by or on behalf of a candidate or political committee until the candidate or political committee appoints a campaign treasurer and certifies the name and address of the campaign treasurer pursuant to this section. The certification, which shall include an organizational statement, properly acknowledged by a notary public, and setting forth of the name and address of the campaign treasurer and all other officers, if any, of the political committee, shall be filed with the commissioner and the appropriate county clerk and recorder as specified for the filing of reports in section 23-4778.

(2) A campaign treasurer may appoint deputy campaign treasurers, but not more than one (1) in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name

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and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(3) Any campaign or deputy campaign treasurer appointed pursuant to this section shall be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two (2) or more candidates and political committees. A candidate may appoint himself as his own campaign or deputy campaign treasurer. No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

(4) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this act when specifically authorized in writing to do so by the campaign treasurer and the candidate in the case of a candidate, or the campaign treasurer and the chairman of the political committee in the case of a political committee.

(5) A candidate or political committee may remove his or its campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer shall immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of his or its campaign treasurer before compliance with any obligation of a campaign treasurer under this act, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in subsection (1) of this section.

(6) Each candidate and each political committee shall designate one (1) primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one (1) secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits in and make expenditures from secondary depositories when authorized to do so as provided in subsection (4) of this section. Only a bank authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to subsection (1) of this section. Nothing in this subsection shall prevent a political committee or candidate from having more than one campaign account in the same depository.

Section 7. There is a new R.C.M. section numbered 23-4782 that reads as follows:

23-4782. Deposit of contributions — statement of campaign treasurer. All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate or political committee shall be deposited prior to the end of the fifth business day following their receipt (Sundays and holidays excluded) in a checking account in a campaign

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depository designated pursuant to section 23-4781. A statement showing the amount received from or provided by each person and the account in which the funds are deposited shall be prepared by the campaign treasurer at the time the deposit is made. This statement along with the receipt form for cash contributions deposited at the same time and a deposit slip for the deposit shall be kept by the treasurer as a part of his records.

Section 8. There is a new R.C.M. section numbered 23-4783 that reads as follows:

23-4783. Treasurer to keep records — inspections. (1) The campaign treasurer of each candidate and each political committee shall keep detailed accounts, current within not more than ten (10) days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a statement filed under this act.

(2) Accounts kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by the campaign treasurer of any opposing candidate or political committee in the same electoral district. The right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurers of political committees supporting a candidate may be joined with the campaign treasurer of the candidate as respondents in such a proceeding.

(3) Accounts kept by a campaign treasurer of a candidate shall be preserved by the campaign treasurer for a period coinciding with the term of office for which the person was a candidate.

Section 9. There is a new R.C.M. section numbered 23-4784 that reads as follows:

23-4784. Petty cash funds allowed. (1) The campaign treasurer for each candidate or political committee is authorized to withdraw the following amount each week from the primary depository for the purpose of providing a petty cash fund for the candidate or political committee:

(a) for all candidates for nomination or election on a statewide basis and all political committees operating on a statewide basis, one hundred dollars ($100) per week; and

(b) for all other candidates and political committees, twenty dollars ($20) per week.

(2) The petty cash fund may be spent for office supplies, transportation expenses, and other necessities in an amount of less than ten dollars ($10). Petty cash shall not be used for the purchase of time, space, or services from any communications medium.

Section 10. There is a new R.C.M. section numbered 23-4785 that reads as follows:

23-4785. Commissioner — how appointed, qualifications, and

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offices. (1) There is hereby created the position of commissioner of campaign finances and practices, who shall be appointed by a majority of a four (4) member selection committee which shall be comprised of the speaker of the house, the president of the senate and the minority floor leaders of both houses of the Montana legislature. However, if a majority of the members of the selection committee cannot agree upon the selection of a commissioner within thirty (30) days after the passage and approval of this act, the Montana supreme court shall appoint a fifth public member to the selection committee. The majority of the five (5) members of the selection committee shall then select the commissioner.

(2) The individual selected to serve as the commissioner of campaign finances and practices shall be appointed for a five (5) year term, but he shall thereafter be ineligible to serve as the commissioner of campaign finances and practices and shall be precluded from being a candidate for public office as defined in this act for a period of five (5) years from the time that his term as commissioner expires.

(3) If for any reason a vacancy should occur in the position of commissioner, a successor shall be appointed within thirty (30) days as provided in subsection (1) to serve out the unexpired term. An individual who is selected to serve out the unexpired term of a preceding commissioner shall be entitled to be reappointed for a five (5) year term as provided in subsection (1).

(4) The commissioner may be removed from office by impeachment as provided in sections 95-2801 and 95-2802, R.C.M. 1947. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in section 94-7-401, R.C.M. 1947.

(5) The commissioner of campaign finances and practices shall receive an annual salary of twenty-one thousand dollars ($21,000) and the salary commission may recommend salary increases to the legislature.

(6) The office of the commissioner shall be attached to the office of the secretary of state for administrative purposes only as specified in section 82A-108, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of section 82A-108, R.C.M. 1947, do not apply.

Section 11. There is a new R.C.M. section numbered 23-4786 that reads as follows:

23-4786. Powers and duties of the commissioner. The commissioner shall exercise the following powers and perform the following duties:

(1) The commissioner of campaign finances and practices shall be responsible for investigating all of the alleged violations of the election laws contained in Title 23, R.C.M. 1947, and shall in conjunction with the county attorneys, be responsible for enforcing all of the state's election laws.

(2) The commissioner shall select an appropriate staff to enforce the provisions of Title 23, R.C.M. 1947, and he shall have the power to hire and fire all personnel under his supervision.

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(3) The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of Title 23, R.C.M. 1947. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general and he shall have the power to prosecute, subject to the control and supervision of the commissioner and the provisions of section 23-4788, any criminal or civil action arising out of a violation of any provision of Title 23, R.C.M. 1947. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(a) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of Title 23, R.C.M. 1947;

(b) attend and give advice to a grand jury when cases involving criminal violations of Title 23, R.C.M. 1947, are presented;

(c) draw and file indictments, informations, and criminal complaints;

(d) prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or county from persons convicted of violating Title 23, R.C.M. 1947; and

(e) do any other act necessary to successfully prosecute a violation of any provision of Title 23, R.C.M. 1947.

(4) The commissioner shall prescribe forms for statements and other information required to be filed pursuant to Title 23, R.C.M. 1947, and furnish forms and appropriate information to persons required to file statements and information.

(5) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file statements pursuant to Title 23, R.C.M. 1947.

(6) The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of Title 23, R.C.M. 1947.

(7) The commissioner shall prescribe the manner in which the county clerks and recorders shall receive, file, collate, and maintain reports filed with them under Title 23, R.C.M. 1947.

(8) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours, and make copying facilities available free of charge or at a charge not to exceed actual cost.

(9) The commissioner shall preserve statements and other information filed with his office for a period of ten (10) years from date of receipt.

(10) The commissioner shall prepare and publish summaries of the statements received.

(11) The commissioner shall prepare and publish such other reports as he may deem appropriate.

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(12) The commissioner shall provide for wide public dissemination of summaries and reports.

(13) The commissioner shall have the authority to investigate all statements filed pursuant to the provisions of Title 23, R.C.M. 1947, and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of Title 23, R.C.M. 1947. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of Title 23, R.C.M. 1947, or any rule or regulation adopted pursuant thereto.

(14) The commissioner shall promulgate and publish rules and regulations to carry out the provisions of Title 23, R.C.M. 1947, and shall promulgate such rules in conformance with the Montana Administrative Procedure Act.

(15) The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ and the money he has disbursed. The commissioner shall also make further reports on the matters within his jurisdiction as the legislature may prescribe and shall also make recommendations for further legislation as may appear desirable.

(16) The commissioner shall be responsible for preparing, administering and allocating the budget for his office.

(17) The commissioner shall have the power to inspect any records, accounts or books that must be kept pursuant to the provisions of Title 23, R.C.M. 1947, which are held by any political committee or candidate so long as such inspection is made during reasonable office hours.

(18) The commissioner shall have the power to issue orders of noncompliance as prescribed by section 23-4787.

(19) The commissioner shall exercise all of the powers conferred upon him by this act or any other provision of state law in any jurisdiction or political subdivision of the state.

(20) After receiving the final campaign contribution and expenditure report filed as required by Title 23, R.C.M. 1947, the commissioner shall inform the secretary of state, or the city or county clerk and recorder that each candidate who has been properly elected to any public office has filed his final contribution and expenditure report as specified in section 23-4778.

(21) The commissioner shall have the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of Title 23, R.C.M. 1947.

Section 12. There is a new R.C.M. section numbered 23-4787 that reads as follows:

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23-4787. Examination of statements and issuance of orders of noncompliance. (1) Each statement filed with the commissioner during an election or within sixty (60) days thereafter shall be inspected within ten (10) days after the date upon which the statement is filed. If a person has not satisfied the provisions of Title 23, R.C.M. 1947, the commissioner shall immediately notify a person of the noncompliance. Such an order of noncompliance shall be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement as required by law or that a statement filed by a person does not conform to law; or

(b) it is determined that a statement filed with the commissioner does not conform to the requirements of Title 23, R.C.M. 1947, or that a person has failed to file a statement required by law.

(2) If an order of noncompliance is issued during a campaign period, or within sixty (60) days after an election, a candidate or political committee shall submit the necessary information five (5) days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall have the authority to initiate a civil or criminal action pursuant to the procedures outlined in section 23-4788.

(3) If an order of noncompliance is issued during any other period than that described in subsection (2), a candidate or political committee shall submit the necessary information within ten (10) days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in section 23-4788.

(4) A candidate or political treasurer aggrieved by the issuance of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this act shall be expeditiously reviewed by the appropriate district court.

(5) Within one hundred twenty (120) days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of Title 23, R.C.M. 1947, to determine whether a statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of Title 23, R.C.M. 1947. The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to Title 23, R.C.M. 1947, or the alleged failure to report any contribution or expenditure required to be reported pursuant to Title 23, R.C.M. 1947.

Section 13. There is a new R.C.M. section numbered 23-4788 that reads as follows:

23-4788. Prosecutions and powers of the county attorney. (1)

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When the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution as specified in section 23-4793, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within thirty (30) days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may at any time prior to the expiration of the thirty (30) day time period specified in subsection (1) waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action as specified in section 23-4793.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of Title 23, R.C.M. 1947.

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana.

(5) Nothing in this act shall prevent a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of Title 23, R.C.M. 1947, that are held by any political committee or candidate involved in an election to be held within the county. However, such inspections must be conducted during reasonable office hours.

(6) A county attorney shall have the authority to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of Title 23, R.C.M. 1947.

Section 14. There is a new R.C.M. section numbered 23-4789 that reads as follows:

23-4789. Right to inspect current accounts and reports. Every individual shall have the right to inspect any report or current account that must be kept or filed pursuant to the provisions of Title 23, R.C.M. 1947, but only if such inspection will occur during reasonable office hours and in such a manner that normal office functions will not be unnecessarily interrupted.

Section 15. There is a new R.C.M. section numbered 23-4790 that reads as follows:

23-4790. Duties of county clerk and recorder. (1) A county clerk and recorder shall maintain all records and statements filed pursuant to the provisions of Title 23, R.C.M. 1947, for a period of ten (10) years from the date of receipt.

(2) A county clerk and recorder shall accept and file any information voluntarily supplied that exceeds the requirements of Title 23, R.C.M. 1947.

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(3) A county clerk and recorder shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner.

(4) A county clerk and recorder shall make statements and other information filed with his office available for public inspection and copying during regular office hours, and make copying facilities available free of charge or at a charge not to exceed actual cost.

Section 16. There is a new R.C.M. section numbered 23-4791 that reads as follows:

23-4791. Names not to be printed on ballot. (1) The name of a candidate shall not be printed on the official ballot for a general or special election if the candidate or a political treasurer for a candidate fails to file any statement as required by Title 23, R.C.M. 1947.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner must by a written statement notify the secretary of state or the city or county clerk or the clerk of a school district, that a candidate, or a candidate's political treasurer, has not complied with the provisions of Title 23, R.C.M. 1947, as described in subsection (1) and that a candidate's name should not be printed on the official ballot.

Section 17. There is a new R.C.M. section numbered 23-4792 that reads as follows:

23-4792. Certificates of election may be withheld. No certificate of election shall be granted to any candidate until his political treasurer has filed the reports and statements that must be filed pursuant to the provisions of Title 23, R.C.M. 1947. No candidate for an elective office may assume the powers and duties of that office until he has received a certificate of election as provided by law. A certificate of election shall only be issued by the public official responsible for issuing a certificate or commission after receiving written assurance from the commissioner that a candidate has filed all of the reports that must be filed pursuant to the provisions of Title 23, R.C.M. 1947.

Section 18. There is a new R.C.M. section numbered 23-4793 that reads as follows:

23-4793. Penalties. (1) A person who knowingly submits a false report or deliberately fails to include any information required by Title 23, R.C.M. 1947, or who knowingly submits a false report or deliberately fails to report any contribution or expenditure as required by Title 23, R.C.M. 1947, may be guilty of false swearing, or unsworn falsification to authorities as applicable and upon conviction shall be punished as provided in sections 94-7-203 or 94-7-204 for each separate violation.

(2) Any person who accepts a contribution prohibited by Title 23, R.C.M. 1947, or makes a contribution in excess of the amounts specified in Title 23, R.C.M. 1947, or in any manner other than that provided in

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Title 23, R.C.M. 1947, is guilty of a violation and upon conviction shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, for each separate violation.

(3) Any person who violates any other provision of Title 23, R.C.M. 1947, upon conviction, shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for a term not to exceed six (6) months, or both, for each separate violation.

(4) If a court of competent jurisdiction finds that the violation of any provision of Title 23, R.C.M. 1947, by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty (60) days of that finding, or where the violation occurred during a primary election, the court may direct the appropriate political party to select a new candidate according to the provisions of state law and the custom of the party. Any action to void an election shall be commenced within one (1) year of the date of the election in question.

(5) Except as provided in subsection (4), any action brought pursuant to the provisions of Title 23, R.C.M. 1947, must be commenced within four (4) years after the date when the violation occurred.

(6) In addition to all other penalties prescribed by this act:

(a) any candidate who is convicted of violating any provision of Title 23, R.C.M. 1947, shall be ineligible to be a candidate for any public office in the state of Montana for a period of five (5) years from the date of conviction;

(b) any campaign treasurer who is convicted of violating any provision of Title 23, R.C.M. 1947, shall be ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana for a period of five (5) years from the date of conviction.

(7) In any action brought pursuant to the provisions of Title 23, R.C.M. 1947, the appropriate state district court shall have the power to enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act herein required.

(8) Nothing in this section shall prevent a county attorney or the commissioner from seeking a penalty otherwise specifically provided for in Title 23, R.C.M. 1947.

(9) All fines and forfeitures imposed pursuant to this section shall be deposited in the state general fund.

Section 19. There is a new R.C.M. section numbered 23-4794 that reads as follows:

23-4794. Secretary of state must furnish copies of this act to appropriate officials. The secretary of state shall, at the expense of the state, furnish the county clerk, and the city and town clerks, copies of Title 23, chapter 47, R.C.M. 1947. The public official with whom a candi-

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date files a declaration or certificate of nomination shall transmit a copy of Title 23, chapter 47, R.C.M. 1947, to the candidate. Such copies shall also be furnished to any other person required to file a statement. Upon his own information, or at the written request of any voter, the secretary of state shall provide a copy of Title 23, chapter 47, R.C.M. 1947, to any other individual who may be a candidate, or who may otherwise be required to make a statement required by this act.

Section 20. Section 23-4701, R.C.M. 1947, is amended to read as follows:

"**23-4701. Violation of election laws by certain officers a misdemeanor.** Every person charged with the performance of any duty, under the provisions of any law of this state relating to elections, or the registration of the names of electors, or the canvassing of the returns of election, who willfully neglects or refuses to perform such duty, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is punishable by fine not exceeding one thousand dollars *($1,000)*, or by imprisonment in *a county jail* not exceeding *six (6) months*, or both."

Section 21. **Severability.** It is the intent of the legislature that if part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. **Effective date.** This act shall become effective upon passage and approval, except that the first reporting period for any candidate or political committee shall begin on January 1, 1976.

Section 23. Sections 23-4722, 23-4725, 23-4726, 23-4728.1, 23-4729, 23-4730, 23-4731, 23-4733 through 23-4736, 23-4750, 23-4755, 23-4761, 23-4769, 23-4772, and 23-4775, R.C.M. 1947, are repealed.

Approved April 21, 1975.

CHAPTER NO. 481

AN ACT IMPOSING LIMITATIONS ON THE AMOUNT OF FUNDS THAT MAY BE CONTRIBUTED IN SUPPORT OF OR IN OPPOSITION TO A CANDIDATE; REPEALING SECTIONS 23-4727 AND 23-4728, R.C.M. 1947; AND PROVIDING FOR A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 23-4795 that reads as follows:

23-4795. Limitation on contributions. (1) Aggregate contributions for all elections in a campaign by an individual to a candidate and polit-

ical committees organized on his behalf other than the candidate and his immediate family are limited as follows:

(a) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed fifteen hundred dollars ($1500);

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed seven hundred fifty dollars ($750);

(c) for a candidate for public service commission not to exceed four hundred dollars ($400);

(d) for a candidate for district court judge, not to exceed three hundred dollars ($300);

(e) for a candidate for the legislature, not to exceed two hundred fifty dollars ($250); and

(f) for a candidate for city or county office, not to exceed two hundred dollars ($200).

(2) An independent committee means a committee which is not organized on behalf of a candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee, and which does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. For the purpose of limitation on contributions, political party organizations are independent committees. Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed eight thousand dollars ($8,000);

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed two thousand dollars ($2,000);

(c) for a candidate for public service commissioner, not to exceed one thousand dollars ($1,000);

(d) for a candidate for district court judge, not to exceed two hundred fifty dollars ($250);

(e) for a candidate for the legislature, not to exceed two hundred fifty dollars ($250);

(f) for a candidate for city or county office, not to exceed two hundred dollars ($200).

(3) (a) Aggregate contributions by a candidate and his immediate family to his own candidacy and committees organized on his behalf are limited for all elections in a campaign as follows:

(i) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed six thousand dollars ($6,000);

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(ii) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed nine thousand dollars ($9,000) to both candidates combined;

(iii) for a candidate for state district office, including but not limited to candidates for the state senate, public service commission and district court judge, not to exceed one thousand dollars ($1,000) in all elections in a campaign;

(iv) For candidates for the state house of representatives not to exceed five hundred dollars ($500) in all elections in a campaign; and

(v) for a candidate for city or county office, not to exceed three hundred dollars ($300) in all elections in a campaign.

(b) As used in this section, a candidate's immediate family means the candidate's spouse, and the ascendents, descendants, brothers and sisters of the candidate and his spouse, and their spouses.

(4) The limitations imposed by this section do not apply to public funds contributed to a candidate under any public financing provision of this code.

Section 2. Sections 23-4727 and 23-4728, R.C.M. 1947, are repealed.

Section 3. **Effective date.** This act is effective on January 1, 1976, and the limitations imposed by this act shall apply to all elections held after that date.

Approved April 21, 1975.

CHAPTER NO. 482

AN ACT TO AMEND SECTION 82-4204, R.C.M. 1947, TO PROVIDE FOURTEEN (14) DAYS TO SUBMIT DATA; AND TO PROVIDE FOR THE EXTENSION OF A HEARING DATE UP TO TWENTY (20) DAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4204, R.C.M. 1947, is amended to read as follows:

"**82-4204. Adoption — amendment or repeal of rules — emergency rules.** (1) Prior to the adoption, amendment or repeal of any rule, the agency shall:

(a) Give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publi-

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cation in the Montana administrative register as provided in section 6 (2) [82-4206 (2)] of this act and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least twenty (20) days in advance of the agency's intended action. If any statute shall provide for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case shall the notice period be less than twenty (20) days.

(b) Afford interested persons *fourteen (14) days* to submit data, views or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ten per cent (10%) or twenty-five (25) of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency or by an association having not less than twenty-five (25) members who will be directly affected. *An interested person may file a written request with the agency to extend a hearing date up to twenty (20) days.* Contested case procedures need not be followed in hearings held pursuant to this section. Where a hearing is otherwise required by statute, nothing herein shall be deemed to alter that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than one hundred and twenty (120) days, but the adoption of an identical rule under subsections (1) (a) and (1) (b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare shall be subject to judicial review.

(3) No rule adopted after the effective date of this act shall be valid unless adopted in substantial compliance with subsections (1) and (2) of this section.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this act.

(5) Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate

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that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed."

Approved April 21, 1975.

CHAPTER NO. 483

AN ACT TO AMEND SECTION 31-105, R.C.M. 1947, REDEFINING THE RANK STRUCTURE OF THE MONTANA HIGHWAY PATROL AND UPDATING ARCHAIC PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-105, R.C.M. 1947, is amended to read as follows:

"31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal. (1) Appointments and promotions. (a) The *division of motor vehicles, department of justice* shall designate *supervisory personnel including, but not limited to,* captains, lieutenants, sergeants, and patrolmen in such numbers as necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the *division* may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) *Supervisory personnel* shall be selected from the patrolmen by the chief, subject to the approval of the *division.* The duties and jurisdiction of the *supervisory personnel* shall be outlined, defined and under the control of the chief subject to the approval of the *division.*

(2) Salaries. (a) The *division* shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

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(b) The base salary of *supervisory personnel* and patrolmen shall be fixed by the *division*, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

(i) Sound and active physical and mental condition.

(ii) Good moral character.

(iii) Resident of Montana for at least one (1) year immediately prior to appointment.

(iv) Pass a satisfactory test in the operation of automobiles.

(v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the *division* for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed *supervisory personnel* shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the *division* for permanent appointments; otherwise the *supervisory personnel* will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrolman, *or any other rank* under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

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(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.

(j) Willful disobedience of rules and regulations adopted by the *division*, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief *or supervisory personnel with the rank of captain or above* shall be filed directly with the *division.*

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the *division* and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The *division* shall have the authority to order the chief to file charges with the *division* when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the *division*, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension — demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

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(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The *division* shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The *division* shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The *division* shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the *division* finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the *division* finds that the charge or charges made against the patrolman not be true, the *division* shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the *division.*

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the *division* shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the *division* shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court."

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Section 2. This act is effective January 1, 1975.

Approved April 21, 1975.

CHAPTER NO. 484

AN ACT PROVIDING FOR A PORK RESEARCH AND MARKETING COMMITTEE TO PROMOTE EFFECTIVE RESEARCH INTO THE PRODUCTION AND MARKETING OF SWINE; AND PROVIDING FOR A TEN CENT (10¢) PER HEAD CHECK-OFF OF ALL SWINE SOLD IN MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 46-3101 that reads as follows:

46-3101. Short title. This act may be cited as the "Montana Pork Research and Marketing Act".

Section 2. There is a new R.C.M. section numbered 46-3102 that reads as follows:

46-3102. Definitions. As used in this act, unless the context otherwise requires:

(1) "Committee" means the Montana pork research and marketing committee provided for in section 82A-1306.

(2) "Producer" means anyone actively engaged in the production of swine and includes a person, partnership, association, corporation, cooperative, trust and any and all business units, devices, and arrangements.

(3) "Purchaser" means any licensed or bonded livestock dealer or livestock market in the state of Montana.

Section 3. There is a new R.C.M. section, numbered 82A-1306, which reads as follows:

82A-1306. Governor to appoint committee — duties — composition — districts — nominees — term of office. (1) The governor of the state of Montana shall appoint an committee to be known as the Montana pork research and marketing committee, which committee shall be composed of:

(a) Five (5) members each of whom is a citizen of Montana, and each of whom derives a substantial portion of his income from producing swine in Montana,

(b) Four ex officio members (who may not vote on any decisions, orders or regulations of the committee):

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(i) the commissioner of the department of agriculture,

(ii) the dean of agriculture of Montana state university,

(iii) administrator of brand enforcement, livestock department,

(iv) administrator of animal health, livestock department.

(3) One member of the committee shall be appointed from each of the following districts, and shall be a resident of, and shall have swine operations in the district from which appointed:

District I. consisting of Deer Lodge, Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders, Glacier, Liberty, Pondera, Teton, Toole, Broadwater, Cascade, Lewis and Clark, Meagher, Beaverhead, Gallatin, Jefferson, Madison, and Silverbow.

District II. consisting of Blaine, Chouteau, Hill, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Wheatland, Big Horn, Carbon, Park, Stillwater, Sweet Grass, Yellowstone.

District III. consisting of Daniels, Dawson, Garfield, McCone, Richland, Roosevelt, Sheridan, Valley, Treasure, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Wibaux, and Phillips.

(4) Two (2) members of the committee shall be appointed at large.

(5) A list of nominees for appointment to the committee may be submitted to the governor by any farm or ranch organization which has substantial numbers of its membership actively engaged in swine production. Each nominee must be from the district for which the appointment shall be made except for the at-large nominees. The first list of nominees shall be submitted in less than thirty-one (31) days after the effective date of this act and thereafter names of nominees shall be submitted not less than ninety-one (91) days prior to the expiration of any committee member's term.

(6) Committee members shall be appointed for a term of five (5) years, except that the terms of office of the committee members first appointed shall be as follows:

(a) District I for four (4) years;

(b) District II for three (3) years;

(c) District III for two (2) years;

(d) At large No. 1 for five (5) years;

(e) At large No. 2 for one (1) year.

(7) Members appointed to fill unexpired terms shall be appointed for the remainder of the unexpired term.

(8) The committee is allocated to the department of livestock for administrative purposes only as provided in section 82A-108.

Section 4. There is a new R.C.M. section numbered 46-3103 that reads as follows:

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46-3103. Compensation — per diem. Members of the committee shall receive no salary but shall be paid, from the committee account, a per diem of twenty dollars ($20) for each day they are actually and necessarily engaged in the transaction of official business under this act.

Section 5. There is a new R.C.M. section numbered 46-3104 that reads as follows:

46-3104. Removal from office — cause — procedure. Any member of the committee shall be removable by the governor for malfeasance, misfeasance or neglect of duty. Any member of the committee:

(1) ceasing to be a resident of the state of Montana,

(2) ceasing to live in the district from which he was appointed, or

(3) ceasing to be actually engaged in producing swine in said state or district, shall automatically be disqualified from continuing as a member.

Section 6. There is a new R.C.M. section numbered 46-3105 that reads as follows:

46-3105. Election of chairman — time of meetings. At the first meeting of the committee, it shall elect a chairman from among its members. The committee shall meet at least once every six (6) months and at such other times as called by the chairman or by any two (2) members of committee.

Section 7. There is a new R.C.M. section numbered 46-3106 that reads as follows:

46-3106. Powers of committee. The committee shall have the power to:

(1) Adopt rules necessary for the administration of this act;

(2) Provide, through the department, for the enforcement of this act;

(3) Conduct adequate, intensive and timely research into the promotion, marketing, production and uses of pork in all phases and relationships.

(4) Enter into written contracts or agreements with recognized agencies, public or private, within or without the state of Montana, for the purpose of, but not limited to, improving pork quality, increasing the efficiency of production, developing marketing knowledge, developing markets and promoting pork and pork products. None of the duties, authorities and powers set forth in this act and delegated to the committee shall be construed to mean or permit participation in state or federal political action.

Section 8. There is a new R.C.M. section numbered 46-3107 that reads as follows:

46-3107. Assessments. There is hereby assessed a per head levy of ten cents (10¢) on all swine sold by producers to purchasers beginning July 1, 1975. The assessment shall be deducted and collected at the time

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of sale from the producers receipt of sale and remitted to department of livestock by purchaser under the provisions of this act.

Section 9. There is a new R.C.M. section numbered 46-3108 that reads as follows:

46-3108. Purchasers delivery of invoice to producers — form — filing of sworn statement — payment of assessment. (1) The purchaser of swine at the time of settlement, shall make and deliver invoices for each purchase to the producer. Such invoices shall show

(a) the name and address of the producer and purchaser

(b) the number of swine sold

(c) the date of the purchase and the amount of assessment collected and remitted to the department of livestock.

(2) The purchaser shall deliver to and have on file with the department of livestock on forms prescribed by the committee by the twentieth (20th) day of each calendar month following any calendar month in which purchaser shall purchase swine of a producer, beginning on August 20, 1975, a sworn statement of the number of swine purchased in Montana during the preceding calendar month. At the time the sworn statement is filed, the purchaser shall pay and remit to the department of livestock the assessment provided for in this act for deposit in the swine research and marketing account.

(3) The statement referred to in subsections (1) and (2) of this section, shall be legibly written and shall be entirely free of any corrections or erasures on the face thereof. Any person who shall alter any part of any statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as is provided herein.

(4) Any time after thirty (30) days from the deduction of the assessment and before the expiration of ninety (90) days following such deduction by the purchaser, the producer may, upon the submission of a written, verified request therefor to the committee through the department of livestock obtain a refund in the amount of the assessment deducted by said purchaser. The request shall be accompanied by the original invoices received by the producer at the time of settlement. The pork research and marketing committee shall keep complete records of all refunds made under the provisions of this act. All original invoices shall be returned to the producer with the refund payments.

Section 10. There is a new R.C.M. section numbered 46-3109 that reads as follows:

46-3109. Receipt of gifts, grants or donations for research purposes. The department of livestock is hereby authorized to receive any gifts, grants, or donations for any research of scientific inquiries conducted under authority of this act, and to use and expend the same in compliance with the conditions, if any, of such grants, gifts and donations, provided such conditions are valid under the laws of the state of Montana, and in aid of the purposes of this act.

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Section 11. There is a new R.C.M. section numbered 46-3110 that reads as follows:

46-3110. Research and marketing account — sources — use — expenditures. (1) The proceeds of all assessments made, paid and collected under this act, and the proceeds from all gifts, grants or donations to the department of livestock for research authorized by this act shall be deposited in the federal and private revenue fund for the use of the committee as provided in this act.

(2) The account shall be maintained for the purposes of this act and shall be separate and apart from all other accounts of the department.

(3) Ten percent (10%) of all unrefunded assessments shall be paid to the national meat board; and

(4) Ten percent (10%) of all unrefunded assessments shall be paid to the national pork producer council.

(5) The committee may be assessed costs by the department only for those services requested by the committee.

Section 12. There is a new R.C.M. section numbered 46-3111 that reads as follows:

46-3111. Contracts for carrying out research, promotion, and marketing of swine. The Montana pork research and marketing committee shall not set up research units or agencies of its own, but shall cooperate and is hereby empowered to enter into contracts with other lawful and proper local, state or national organizations, public or private, in carrying out all phases of research and marketing contemplated by this act.

Section 13. There is a new R.C.M. section numbered 46-3112 that reads as follows:

46-3112. Violation of act — penalty. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than twenty-five dollars ($25) nor more than five hundred dollars ($500).

Section 14. There is a new R.C.M. section numbered 46-3113 that reads as follows:

46-3113. Duration of act — expiration — reversion of remaining funds. This act shall be in full force and effect from July 1, 1975 for a period of seven (7) years. If this act is not renewed through legislative action to extend beyond seven (7) years, any money remaining that has been collected under this act shall revert to Montana state university to be used exclusively for swine research.

Approved April 21, 1975.

CHAPTER NO. 485

AN ACT TO AMEND THE MONTANA WATER USE ACT BY PROVID-

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ING ADDITIONAL DEFINITIONS; DELETING THE POWER OF THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ADOPT RULES GOVERNING INTERIM APPROVAL OF A CHANGE OF AN APPROPRIATION RIGHT; PROVIDING THAT THE DEPARTMENT SHALL CEASE ACTION ON APPLICATIONS NOT IN GOOD FAITH OR NOT SHOWING A BONA FIDE INTENT TO APPROPRIATE WATER FOR A BENEFICIAL USE; REQUIRING THE DISTRICT COURT RATHER THAN THE DEPARTMENT TO ISSUE THE ORDER REQUIRING CLAIMANTS OF EXISTING RIGHTS TO FILE DECLARATIONS; CLARIFYING THE PRIORITY DATE FOR CONVERTED OIL OR GAS WELLS; ALLOWING SUSPENSION OF PUBLICATION OF NOTICE OF CERTAIN PERMIT APPLICATIONS; PROVIDING FOR EXTENSION OF TIME TO ACT ON AN APPLICATION; CLARIFYING THE PRIORITY DATE FOR RESERVATIONS OF WATER; CLARIFYING THE PROCEDURE TO BE FOLLOWED IN THE COURTS' SUPERVISION OF WATER DISTRIBUTION; PROVIDING A NEW SECTION FOR ADMINISTRATIVE ENFORCEMENT OF THE ACT; REQUIRING NOTIFICATION PRIOR TO HEARINGS BEFORE THE BOARD; SPECIFYING THE APPLICABILITY OF THE RULES OF EVIDENCE IN ADMINISTRATIVE HEARINGS; PROVIDING A SAVING CLAUSE; AMENDING SECTIONS 89-867, 89-869, 89-872 THROUGH 89-876, 89-880, 89-881, 89-884, 89-890, 89-896, 89-8-100, AND 89-8-101, R.C.M. 1947; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-867, R.C.M. 1947, is amended to read as follows:

"**89-867. Definitions.** Unless the context requires otherwise, in this *chapter*:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal power, and recreational uses; provided, however, that a use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in the case of a public agency to reserve water in accordance with section 89-890.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to *July 1, 1973.*

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

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(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 89-880 through 89-887.

(8) "Certificate" means the certificate of water right issued by the department under sections 89-879, 89-880 *(5)*, and 89-888.

(9) "Declaration" means the declaration of an existing right filed with the department under section 89-872.

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Political" subdivision means any county, incorporated city or town, public corporation or district created pursuant to state law, or other public body of the state empowered to appropriate water, but not a private corporation, association, or group.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(13) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(15) "Act" means the Montana Water Use Act and any subsequent amendments or additions thereto."

Section 2. Section 89-869, R.C.M. 1947, is amended to read as follows:

"89-869. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under Title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report

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to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations; *and*

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 89-872, R.C.M. 1947, is amended to read as follows:

"**89-872. Declarations of existing rights.** (1) The department shall *obtain from the district court* an order *pursuant to section 89-873* requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one (1) year after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(a) The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under this act, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration."

Section 4. Section 89-873, R.C.M. 1947, is amended to read as follows:

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"89-873. **Filing of petition.** (1) *Proceedings for the determination of existing rights shall be commenced by the department in the district court of the judicial district in which the source or area is located. The department shall request by petition, and the district court shall issue an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration as provided in section 89-872.*

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within thirty (30) days of receipt of the notice, the judges of those district courts shall agree on which district shall *receive* the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which *it determines that* the greatest number of *existing rights are likely to be located.*"

Section 5. Section 89-874, R.C.M. 1947, is amended to read as follows:

"89-874. **Contents of petition.** (1) *Within a reasonable time after gathering all data necessary under section 89-871, the department* shall *file with the district court* the names of all persons who have filed declarations under section 89-872 and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall *also* file with the *district court* all data gathered under section 89-871.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data."

Section 6. Section 89-875, R.C.M. 1947, is amended to read as follows:

"89-875. **Preliminary decree.** (1) Within a reasonable time after the *department files with the district court the material required by section 89-874,* the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted *by the department* and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 89-877.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the *material submitted* under section *89-874* or named in the preliminary decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the *material* or in the preliminary decree may

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inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data."

Section 7. Section 89-876, R.C.M. 1947, is amended to read as follows:

"**89-876. Hearing on preliminary decree.** (1) The department or a person named in the *material* filed under section *89-874* or named in the preliminary decree, or any other person for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within ninety (90) days after receipt of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing."

Section 8. Section 89-880, R.C.M. 1947, is amended to read as follows:

"**89-880. Right to appropriate — application for permit.** (1) After *July 1, 1973*, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection *(5)* of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefore except by

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applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(5) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(6) A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. *The date of appropriation shall be the date of filing the notice of completion or the application for a permit.*

(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."

Section 9. Section 89-881, R.C.M. 1947, is amended to read as follows:

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"**89-881. Notice of application.** (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 89-890. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 10. Section 89-884, R.C.M. 1947, is amended to read as follows:

"**89-884. Action on application.** (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held*; however, in either case the time may be extended upon agreement of the applicant, or, in extraordinary cases, not more than thirty (30) days upon order of the department. If the department orders the time extended it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by section 89-882.*

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested."

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Section 11. Section 89-890, R.C.M. 1947, is amended to read as follows:

"**89-890. Reservation of waters.** (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 89-881 through 89-883. After the hearing provided in section 89-883, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest. If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall *date from the date the order reserving the water is adopted by the board, and* shall not *adversely* affect any rights in existence *at that time.*

(6) The board shall, periodically but not less than every ten (10) years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation."

Section 12. Section 89-896, R.C.M. 1947, is amended to read as follows:

"**89-896. Supervision of water distribution.** (1) *The* district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior *or subsequent* to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

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(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to sections 89-870 through 89-879, *any party to the controversy may petition the district court for relief. The* department *shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends* in its discretion, within a reasonable time, *to* begin proceedings to determine existing rights in the source, in accordance with this act. *The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceeding. The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the department's decision whether to determine existing rights in the source, or the department's decision to intervene as a party, as the case may be.* If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under sections 89-870 through 89-879 shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be *served with process* in any proceeding under this *subsection, and the department may, in its discretion, intervene in the proceeding.*"

Section 13. Section 89-8-100, R.C.M. 1947, is amended to read as follows:

"**89-8-100. Hearings before board — Administrative Procedure Act.** (1) A person who is aggrieved by a final decision of the department *under this act* is entitled to a hearing before the board. *A person desiring a hearing before the board pursuant to this section shall notify the department in writing within ten (10) days of the final decision.*

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act, *except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.*"

Section 14. There is a new R.C.M. section numbered 89-8-102.1 that reads as follows:

89-8-102.1. Saving clause. Nothing in this act abates or otherwise adversely affects the validity of any filing, notice, or judicial proceeding commenced under the law as it existed before July 1, 1973.

Section 15. This act applies to applications currently pending with the department, as well as applications filed with the department after the effective date of this act.

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Section 16. This act is effective upon its passage and approval.

Approved April 21, 1975.

CHAPTER NO. 486

AN ACT TO AMEND THE 1975 BOND VALIDATING ACT; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2, chapter 265, 1975 Laws of Montana, is amended to read as follows:

"Section 2. There is a new R.C.M. section numbered 79-2002 that reads as follows:

"79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings: (1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the board of *public* education, *the board of regents of higher education,* the state board of examiners, the board *of natural resources and conservation,* the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund."

Section 2. Section 4, chapter 265, 1975 Laws of Montana, is amended to read as follows:

"Section 4. There is a new R.C.M. section numbered 79-2004 that reads as follows:

"79-2004. Act does not apply to pending actions. This act shall not apply to or affect any action or appeal instituted on or before *the effective date of this act,* in which the validity of any such proceeding or of any such bonds is at issue."

Section 3. There is a new section in chapter 265, 1975 Laws of Montana numbered 5 that reads as follows:

"Section 5. This act is effective on passage and approval of Senate bill 406."

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Section 4. This act is effective on passage and approval.

Approved April 21, 1975.

CHAPTER NO. 487

AN ACT TO BE KNOWN AS THE "MONTANA CODE OF FAIR PRACTICES" RELATING TO THE NONPARTICIPATION OF THE GOVERNMENT OF THE STATE OF MONTANA IN DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGIOUS CREED, POLITICAL IDEAS, SEX, AGE, MARITAL STATUS, PHYSICAL OR MENTAL HANDICAP, NATIONAL ORIGIN, OR ANCESTRY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 64-316 that reads as follows:

64-316. Definitions. As used in this act: "state and local governmental agencies" means all branches, departments, offices, boards, bureaus, commissions, agencies, university units, colleges, or any other instrumentality of state government; and counties, cities, towns, school districts or any other instrumentality of local government.

Section 2. There is a new R.C.M. section numbered 64-317 that reads as follows:

64-317. Employment of state and local government personnel without regard for race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications, without regard to race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including qualifications appraisal, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

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Section 3. There is a new R.C.M. section numbered 64-318 that reads as follows:

64-318. Nonparticipation in discriminatory practices. All services of every state and local governmental agency shall be performed without discrimination based upon race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry. No state or local facility shall be used in the furtherance of any discriminatory practice, nor shall any state or local agency become a party to any agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices. Each state and local agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this act and shall initiate comprehensive programs to remedy any defect found to exist.

Section 4. There is a new R.C.M. section numbered 64-319 that reads as follows:

64-319. Public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods and services shall contain a provision that all hiring shall be on the basis of merit and qualifications and a provision that there shall be no discrimination on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry by the persons performing the contract. As used in this act, "qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task.

Section 5. There is a new R.C.M. section numbered 64-320 that reads as follows:

64-320. Employment requests — cooperation with commission for human rights programs — enforcement of the policy of the act. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers, shall accept job orders on a fair practice basis. Any job request indicating an intention to exclude any person because of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights initiated for the purpose of broadening the base of job recruitment and shall further cooperate with all employers and unions providing such programs.

(3) The department of labor shall cooperate with the commission for human rights in encouraging and enforcing employers and labor unions to comply with the policy of this act and promote equal employment opportunities.

Section 6. There is a new R.C.M. section numbered 64-321 that reads as follows:

64-321. Licensing. No state or local department, board, or agency shall grant, deny, or revoke the license or charter of any person on the grounds of race, color, religious creed, political ideas, sex, age, marital

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status, physical or mental handicap, national origin, or ancestry. Each state and local agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons and eliminate discrimination and enforce compliance with the policy of this act.

Section 7. There is a new R.C.M. section numbered 64-322 that reads as follows:

64-322. Public accommodations. No state or local department, board, or agency shall permit any violation of the public accommodations provisions of section 64-306, R.C.M. 1947.

Section 8. There is a new R.C.M. section numbered 64-323 that reads as follows:

64-323. State programs. All education, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state or local agencies, or in which state or local agencies participate, shall be open to all persons, who shall be accepted on the basis of merit and qualifications without regard to race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry. Such programs shall be conducted to encourage the fullest development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall be encouraged to involve larger numbers of participants from those segments of the labor force where the need for upgrading levels of skill is greatest.

Section 9. There is a new R.C.M. section numbered 64-324 that reads as follows:

64-324. Distribution of funds, benefits, loans, and financial assistance. Race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry shall not be considered as limiting factors in state or locally administered programs involving the distribution of funds to qualify applicants for benefits authorized by law; nor shall state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

Section 10. There is a new R.C.M. section numbered 64-325 that reads as follows:

64-325. Cooperation with the commission for human rights. All state and local agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's request for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission for human rights shall continue to augment its enforcement and education programs which seek to eliminate all discrimination.

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Section 11. There is a new R.C.M. section numbered 64-326 that reads as follows:

64-326. Annual reports. All departments, agencies, commissions, and other bodies of the state government which report to the governor shall include in their annual reports to the governor, activities undertaken in the past year to effectuate this act. Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the governor.

Section 12. There is a new R.C.M. section numbered 64-327 that reads as follows:

64-327. Local governmental units. Local governmental units affected by this act include all political subdivisions of the state including school districts.

Section 13. There is a new R.C.M. section numbered 64-328 that reads as follows:

64-328. Permitted distinctions. Nothing in this act shall prohibit any public or private employer (1) from enforcing a differentiation based on age or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age; or (2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this act, except that no such employee benefit plan shall excuse the failure to hire any individual; or (3) from discharging or otherwise disciplining an individual for good cause.

Section 14. There is a new R.C.M. section numbered 64-329 that reads as follows:

64-329. Remedies. (1) Any person claiming to be aggrieved by a violation of any provision of this act may file a complaint for redress of the violation with the commission for human rights and upon filing that complaint may, in addition, petition the district court in the district where the complainant resides or where the alleged violation occurred for appropriate relief, and the court may grant such relief, by injunction or otherwise, as it considers appropriate. Commencement of the administrative remedy does not preclude the judicial remedy.

(2) Actions under this section are original actions.

Section 15. There is a new R.C.M. section numbered 64-330 that reads as follows:

64-330. Quotas not required. Nothing in this act shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic or other group affected by this act.

Approved April 21, 1975.

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CHAPTER NO. 488

AN ACT TO PROVIDE FOR AND TO REGULATE INTERIM MUNICIPAL ZONING REGULATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-2711 that reads as follows:

11-2711. Interim zoning ordinances — when permitted — duration. The city or town council, or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time. Such interim ordinance shall only be applicable within the city limits and up to one mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least seven (7) days before the hearing; provided further, however, such interim ordinance shall be of no further force and effect six (6) months from the date of adoption thereof; provided, however, that after notice pursuant to section 11-2704, and pursuant to public hearing, the legislative body may extend such interim ordinance for one (1) year. Any such extension shall require a two-thirds (⅔) vote for passage and shall become effective upon passage. Not more than two (2) such extensions may be adopted.

Approved April 21, 1975.

CHAPTER NO. 489

AN ACT AMENDING THE OPEN SPACE LAND ACT AND PROVIDING FOR CONSERVATION EASEMENTS; AMENDING SECTIONS 62-601, 62-602, 62-603, 62-604, 62-605, 62-608, 67-601, AND 67-602, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 62-601, R.C.M. 1947, is amended to read as follows:

"**62-601. Short title.** This act may be cited as the "Open-Space Land *and Voluntary Conservation Easement* Act.""

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Section 2. Section 62-602, R.C.M. 1947, is amended to read as follows:

"**62-602. Purposes of act.** The legislature finds that the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments; that the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living; *that this population spread and its attendant development is disrupting and altering the remaining natural areas, biotic communities, geological and geographical formations and, thereby, providing the potential for the destruction of scientific, educational, aesthetic, and ecological values; that the present and future rapid population spread throughout the state of Montana into its open spaces, are creating serious problems of lack of open space and overcrowding of the land; that to lessen congestion and to preserve natural, ecological, geographical and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographic elements in their natural state*; that the acquisition or designation of interests and rights in real property by *certain qualifying private organizations and by* public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; and that the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose*; and that the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.*

In accordance with these findings, the legislature states that the purposes of this act are to authorize and enable public bodies *and certain qualifying private organizations voluntarily* to provide *for the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic or educational interest, and to provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years, and, furthermore to encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this act.*"

Section 3. Section 62-603, R.C.M. 1947, is amended to read as follows:

"**62-603. Definitions.** The following terms whenever used or referred to in this act shall have the following meanings unless a different meaning is clearly indicated by the context:

(a) "Public body" means the state, counties, cities, towns and other municipalities.

(b) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

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(c) "Open-space land" means any land which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

(d) "Comprehensive planning" means planning for development and shall include: (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development; (2) programming and financing plans for capital improvements; (3) co-ordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (4) preparation of regulatory and administrative measures in support of the foregoing.

(e) "Conservation easement" means an easement or restriction running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction, any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than fifteen (15) years. An easement granted for a term of years may be renewed for a term of fifteen (15) or more years upon the execution of a new granting instrument by the parties. A conservation easement may be applied to urban or nonurban land.

(f) "Qualified private organization" means a private organization: (1) competent to own interests in real property, and; (2) which qualifies and holds a general tax exemption under the Federal Internal Revenue Code, section 501 (c) and; (3) whose organizational purposes are designed to further the purposes of this act."

Section 4. Section 62-604, R.C.M. 1947, is amended to read as follows:

"62-604. Acquisition and designation of real property by public body. To carry out the purposes of this act, any public body may (1) acquire by purchase, gift, devise, bequest or grant title to or any interests or rights in real property, *including land and water,* that will provide a means for the preservation or provision of *significant* open-space land, *or the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both,* (2) designate any real property, *including land and water,* in which it has an interest to be retained and used for the preservation and provision of *significant* open-space land*; or the preservation of native plants or animals, or biotic communities, or geological or geographic formations of scientific, aesthetic, or educational interests, or both.*

Where a public body acquires under this act an interest in land less than fee, this acquisition shall be by conservation easement. Public bodies

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holding conservation easements shall enforce the provisions of these easements."

Section 5. Section 62-605, R.C.M. 1947, is amended to read as follows:

"62-605. Conversion or diversion of open-space land, where prohibited—substitution of other realty—conveyance or lease of open-space land authorized. *(1)* No open-space land, the title to, or interest or right in which has been acquired under this act shall be converted or diverted from open-space land use unless the conversion or diversion is*: (a) necessary to the public interest; (b) not in conflict with the program of comprehensive planning for the area; and (c) permitted by the conditions imposed at the time of the creation of the conservation easement.* Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding one (1) year for any real property converted or diverted from open-space land use. *Property* substituted *is* subject to the provisions of this act.

(2) A *grantee* may convey or lease any real property it has acquired or which has been designated for the purposes of this act. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land *and which are consistent with the express terms and conditions of the grant,* unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection *(1)* of this section."

Section 6. Section 62-608, R.C.M. 1947, is amended to read as follows:

"62-608. Taxation of property subject to conservation easement. *Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.*

Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than fifteen (15) days after the date of expiration."

Section 7. There is a new R.C.M. section numbered 62-610 that reads as follows:

62-610. Easements — type allowed. Easement or restrictions under this act may prohibit or limit any or all of the following:

(1) Structures. Construction or placing of buildings, camping trailers, house trailers, mobile homes, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

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(2) Landfill. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

(3) Vegetation. Removal or destruction of trees, shrubs or other vegetation.

(4) Loam, gravel, etc. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance.

(5) Surface use. Surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition.

(6) Acts detrimental to conservation. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation or fish and wildlife habitat and preservation.

(7) Subdivision of land. Subdivision of land as defined in section 11-3861.

(8) Other acts. Other acts or uses detrimental to such retention of land or water areas in their existing conditions.

(9) The term "land" in subsections (2) and (3) above, includes land under water, and water, and water surface.

Section 8. There is a new R.C.M. section numbered 62-611 that reads as follows:

62-611. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase or gift, devise, bequest, or grant, title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, or biotic communities, or geological or geographic formations of scientific, aesthetic, or educational interest.

Section 9. There is a new R.C.M. section numbered 62-612 that reads as follows:

62-612. Conservation easements run with the land — enforceability. The provisions of sections 58-305, 58-306, and 58-307, notwithstanding, for the purposes of this act, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership and no conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement, or because such easement is an easement in gross.

Section 10. There is a new R.C.M. section numbered 62-613 that reads as follows:

62-613. Assignability. For the purposes of this act, all conservation easements shall be assignable unless the instrument of conveyance or

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ownership expressly stipulates otherwise, and no conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership; provided that the assignees must be qualified under the terms of this act to hold a conservation easement.

Section 11. There is a new R.C.M. section numbered 62-614 that reads as follows:

62-614. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review by the appropriate local planning authority for the county within which the land lies prior to recording. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have ninety (90) days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee, but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority, or the local planning authority has indicated in writing it will have no comments, or ninety (90) days have elapsed, whichever first occurs.

Section 12. There is a new R.C.M. section numbered 62-615 that reads as follows:

62-615. Recording and description of land. All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries. The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the state department of revenue.

Section 13. There is a new R.C.M. section numbered 62-616 that reads as follows:

62-616. Enforcement. Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

Section 14. There is a new R.C.M. section numbered 62-618 that reads as follows:

62-618. Construction. This section shall not be construed to imply that any easement, covenant, condition or restriction which does not have the benefit of this act shall on account of any provisions hereof be unenforceable. Nothing in this act shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

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Section 15. Section 67-609, R.C.M. 1947, is renumbered 62-617.

Section 16. Section 67-601, R.C.M. 1947, is amended to read as follows:

"**67-601. Servitudes attached to land.** The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture.

2. The right of fishing.

3. The right of taking game.

4. The right of way.

5. The right of taking water, wood, minerals, and other things.

6. The right of transacting business upon land.

7. The right of conducting lawful sports upon land.

8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.

9. The right of receiving water from or discharging the same upon land.

10. The right of flooding land.

11. The right of having water flow without diminution or disturbance of any kind.

12. The right of using a wall as a party wall.

13. The right of receiving more than natural support from adjacent land or things affixed thereto.

14. The right of having the whole of a division fence maintained by a coterminous owner.

15. The right of having public conveyances stopped, or of stopping the same on land.

16. The right of a seat in church.

17. The right of burial.

18. The right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land."

Section 17. Section 67-602, R.C.M. 1947, is amended to read as follows:

"**67-602. Servitudes not attached to land.** The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1. The right of pasture, and of fishing and taking game.

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2. The right of a seat in church.

3. The right of burial.

4. The right of taking rents and tolls.

5. The right of way.

6. The right of taking water, wood, minerals, or other things.

7. The right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land."

Approved April 21, 1975.

CHAPTER NO. 490

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO HAS SERVED HIS SENTENCE AND IS NO LONGER UNDER STATE SUPERVISION MAY BE GRANTED OCCUPATIONAL LICENSURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-4001 that reads as follows:

66-4001. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

Section 2. There is a new R.C.M. section numbered 66-4002 that reads as follows:

66-4002. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety and welfare.

Section 3. There is a new R.C.M. section numbered 66-4003 that reads as follows:

66-4003. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense, and such criminal offense relates to the public health, welfare and safety as it applies to the occupation for which the license is

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sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

Section 4. There is a new R.C.M. section numbered 66-4004 that reads as follows:

66-4004. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed, wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

Section 5. There is a new R.C.M. section numbered 66-4005 that reads as follows:

66-4005. Licensure on completion of supervision. Completion of probation or parole supervision, without any subsequent criminal conviction, shall be evidence of rehabilitation, provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

Approved April 21, 1975.

CHAPTER NO. 491

AN ACT TO IMPLEMENT ARTICLE II, SECTION 8 OF THE 1972 CONSTITUTION BY PROVIDING GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF GOVERNMENT AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-4226 that reads as follows:

82-4226. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

Section 2. There is a new R.C.M. section numbered 82-4227 that reads as follows:

82-4227. Definitions. As used in this act:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules except:

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(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings as to the applicability of any statutory provision or of any rule;

(c) intra-agency memoranda.

Section 3. There is a new R.C.M. section numbered 82-4228 that reads as follows:

82-4228. Agency requirements. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final decision is made on the adoption of a rule or policy, awarding a contract, granting or denying a permit, license or change of rate that is of significant interest to the public.

(2) An agency shall be deemed to have complied with the notice provisions of this act if:

(a) an environmental impact statement is prepared and distributed as required by the Montana environmental policy act, title 69, chapter 65;

(b) a proceeding is held as required by the Montana administrative procedure act, title 82, chapter 42;

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision prior to a final decision on a matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(4) The provisions of this act do not apply to:

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(a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare or safety;

(b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(c) a decision involving no more than a ministerial act.

(5) Each agency shall adopt guidelines for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request.

Section 4. There is a new R.C.M. section numbered 82-4229 that reads as follows:

82-4229. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this act upon petition of any person whose rights have been prejudiced made within thirty (30) days of the date of the decision.

Approved April 21, 1975.

CHAPTER NO. 492

AN ACT AMENDING SECTIONS 69-6508 AND 69-6509, R.C.M. 1947, MAKING THE GOVERNOR'S REPRESENTATIVE ON THE ENVIRONMENTAL QUALITY COUNCIL A NONVOTING MEMBER AND REVISING THE TERMS OF OFFICE OF COUNCIL MEMBERS, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-6508, R.C.M. 1947, is amended to read as follows:

"69-6508. Environmental quality council. The environmental quality council shall consist of thirteen (13) members to be as follows:

(a) The governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a *nonvoting* member.

(b) Four (4) members of the senate and four (4) members of the house of representatives appointed before the *fiftieth* legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the council occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the council. No more than two (2) of the appointees of each house shall be members of the same political party.

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(c) Four (4) members of the general public; *two (2) public members shall be appointed by the speaker of the house with the consent of the house minority leader, and two (2) shall be appointed by the president of the senate with the consent of the senate minority leader.*

In considering the appointments of (b) and (c) above, consideration shall be given to their qualifications to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 69-6503 of this act; to be conscious and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment."

Section 2. Section 69-6509, R.C.M. 1947, is amended to read as follows:

"**69-6509. Term of office.** *(1) The terms of office of all council members shall be two (2) years and shall terminate upon appointment of a new council before the fiftieth legislative day. Council members may be reappointed; however, in no case shall a member serve more than six (6) years.*

(2) The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of two (2) years."

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved April 21, 1975.

CHAPTER NO. 493

AN ACT TO AWARD COSTS AND REASONABLE ATTORNEYS' FEES TO A PLAINTIFF WHO BRINGS A SUCCESSFUL ACTION UNDER THE RIGHT TO KNOW PROVISION OF THE MONTANA CONSTITUTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-8632 that reads as follows:

93-8632. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce his rights under Article II, section 9 of the Montana constitution may be awarded his costs and reasonable attorneys' fees.

Approved April 21, 1975.

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CHAPTER NO. 494

AN ACT AMENDING SECTIONS 70-801 THROUGH 70-823, R.C.M. 1947, TO GENERALLY REVISE THE MONTANA UTILITY SITING ACT OF 1973; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-801, R.C.M. 1947, is amended to read as follows:

"**70-801. Short title.** This *chapter shall be known and* may be cited as the Montana *Major Facility* Siting Act."

Section 2. Section 70-802, R.C.M. 1947, is amended to read as follows:

"**70-802. Policy and legislative findings.** It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power *or* energy conversion facilities may be necessary to meet the increasing need for electricity, energy, *and other products,* and that *these* facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that *a* power or energy conversion facility *may not* be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this *chapter.*"

Section 3. Section 70-803, R.C.M. 1947, is amended to read as follows:

"**70-803. Definitions.** *In this chapter, unless the context requires otherwise*:

(1) "*Department*" means the department of natural resources and conservation *provided for in Title 82A, chapter 15.*

(2) "*Board*" means the board of natural resources and conservation *provided for in section 82A-1509.*

(3) "*Facility*" *means*:

(a) *each* plant, *unit, or other facility* and associated facilities, *except for oil and gas refineries,*

(i) designed for, or capable of, generating fifty (50) megawatts of electricity or more, or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added

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to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(ii) designed for, or capable of, producing *twenty-five million (25,000,000)* cubic feet of gas per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iii) designed for, or capable of, producing *twenty-five thousand (25,000)* barrels of liquid hydrocarbon products per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(iv) designed for, or capable of, enriching uranium minerals, *or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or*

(v) designed for, or capable of, utilizing, refining, or converting five hundred thousand (500,000) tons of coal per year or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000);

(b) *each* electric transmission line and associated facilities of a design capacity of *more than sixty-nine (69)* kilovolts, except that *the term does not include an electric transmission line and associated facilities of a design capacity of two hundred thirty (230) kilovolts or less and ten (10) miles or less in length;*

(c) *each pipeline* and associated facilities designed for, or capable of, transporting gas, *water,* or liquid hydrocarbon products from *or to* a facility *located within or without this state* of the size indicated in *subsection (3)(a)* of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy;

(e) any underground in situ gasification of coal.

(4) "*Associated* facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams, *transmission substations, storage ponds, reservoirs,* and any other device or equipment associated with the production or delivery of the energy form *or product* produced by a facility, *except that the term does not include a facility.*

(5) "*Commence* to construct" *means*:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility, but *does* not *mean* changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means, if such activity is related to the possible future development of *a gasification facility or a* facility employing geothermal resources, but *does* not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

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(c) the commencement of eminent domain proceedings under Title 93, chapter 99, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (3)(b) or (c), including upgrading to a design capacity covered by subsection (3)(b), except that the term does not include normal maintenance or repair of an existing facility.

(6) "*Municipality*" means any county or municipality within this state.

(7) "*Person*" *means* any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization *or entity.*

(8) "*Utility*" *means* any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, *hydrocarbon products* or energy in any form for ultimate public use.

(9) "*Certificate*" means the certificate of environmental compatibility and public need issued by the board *under this chapter that is* required for the construction or operation of *a* facility.

(10) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the certificate was issued."

Section 4. Section 70-804, R.C.M. 1947, is amended to read as follows:

"70-804. Certificate from board required prior to construction of facility — exemptions. (1) *A* person *may not* commence to construct a facility in the state without first *applying for and obtaining* a certificate *of environmental compatibility and public need* issued with respect to *the* facility by the board. *A* facility, with respect to which a certificate is *issued, may not* thereafter be constructed, operated *or* maintained *except* in conformity with *the* certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this *chapter.*

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This *chapter does* not apply to *a* facility over which an agency of the federal government has exclusive jurisdiction.

(4) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that would otherwise be covered by this chapter and that is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods.

(5) A certificate is not required under this chapter for a facility under diligent on site physical construction or in operation on January 1, 1973."

Section 5. Section 70-805, R.C.M. 1947, is amended to read as follows:

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"**70-805. Surcharge on electric energy producer's license tax — administrative expenses — tax on gasification, liquefaction, uranium enrichment facilities.** *(1)* Every "producer" as defined in chapter 16 of Title 84 shall, in addition to the sum required to be paid by that *chapter*, pay an additional twenty-five hundredths percent (0.25%) of the gross amount as shown on the statement which is required by that *chapter*, in the same manner and within the time provided by that *chapter*. The *department of revenue* shall report to the state treasurer separately the amount transmitted to the state treasurer which is added to the electrical energy producers' license tax by this section.

(2) The legislature shall appropriate sufficient funds to finance the department's activities in carrying out its duties under this *chapter*. The legislature shall provide a tax on gasification, liquefaction, *coal conversion,* and uranium enrichment facilities sufficient to produce an amount of revenue equal to that derived from electrical energy producers under this section."

Section 6. Section 70-806, R.C.M. 1947, is amended to read as follows:

"**70-806. Application for certification — filing and contents — filing fees — notice of completion of facility — further fees — refund —proof of service on municipalities—amendment of application or certification** (1) *(a) An* applicant for a certificate shall file with the department *a verified* application, in such form as the *board by rule or the department by order prescribes,* containing the following information:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(v) such other information as the applicant *considers* relevant or as the *board by rule or the* department by order *requires.* A copy or copies of the studies referred to in clause *(ii)* above shall be filed with the department, if ordered, and shall be available for public inspection.

(b) An application may consist of an application for two (2) or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(2) *(a) The applicant shall pay to the department a filing fee with the application,* based upon the estimated cost of the facility according to the declining scale which follows*: two percent (2%)* of any estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars ($20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars ($20,000,000); and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (0.25%) of any

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amount of estimated cost over one hundred million ($100,000,000) and up to three hundred million dollars ($300,000,000); plus *one-eighth of one percent (.125%)* of any amount of estimated cost over three hundred million dollars ($300,000,000). *The* revenues derived from the filing fee *shall* be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this act *with respect to the facility covered by the certificate for a period not to exceed five (5) years after the certificate is issued for facilities defined in 70-803 (3) (b) and (c) or not to exceed ten (10) years after the certificate is issued for facilities defined in 70-803 (3)(a), (d), and (e). If an application consists of a combination of two (2) or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.*

(b) The applicant is entitled to an accounting of moneys expended and to a refund of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter.

(c) The department may contract with a potential applicant under this chapter, in advance of the filing of a formal application, for the development of information or provision of services required hereunder. Payments made to the department under such a contract shall be credited against the fee payable hereunder.

(3) *An* application shall be accompanied by proof of service of a copy of *the* application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of *the* facility is to be located, both as primarily and as alternatively proposed. The copy of *the* application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) *An* application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in *those* newspapers as will serve substantially to inform *those* persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of *an application or* a certificate shall be in such form and contain such information as the *board by rule or the* department *by order prescribes.* Notice of such an application shall be given as set forth in subsections (3) and (4) of this section. *If an amendment to an original application would result in a substantial change of the original application, such an amendment shall be considered as a new application and a new filing fee shall be required."*

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Section 7. Section 70-807, R.C.M. 1947, is amended to read as follows:

"70-807. Study, evaluation and report on proposed facility — hearing on application for amendment of certificate — hearings. (1) Upon receipt of an application complying with section 70-806, the department shall commence an intensive study and evaluation of the proposed facility and its effects, *considering all the criteria listed in sections 70-810 and 70-816.* Within *two (2) years* following receipt of *an* application for a facility as defined in *subsections* 70-803 (3)(a) *and* 70-803 (3)(d) *and for a facility as defined in subsections 70-803 (3)(b) and (c) which is more than thirty (30) miles in length,* and within *one (1) year* for a facility as defined in *subsections 70-803 (3)(b) and (c) which is thirty (30) miles or less in length,* the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and the final environmental impact statement. *If the application is for a combination of two (2) or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.*

(2) The departments of health and environmental sciences, highways, intergovernmental relations, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. *The report* may include opinions as to the advisability of granting, denying, *or modifying* the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(3) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of *the* facility other than as provided in the alternates set forth in the application.

(4) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a date *for a hearing to begin* not more than *one hundred twenty (120)* days after *the* receipt*; except for those hearings involving applications submitted for facilities as defined in section 70-803(3)(b) and (3)(c), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility, or the greater portion thereof, is to be located.*

Section 8. Section 70-808, R.C.M. 1947, is amended to read as follows:

"70-808. Parties to certification proceeding — waiver by failure to participate. (1) The parties to a certification proceeding include:

(a) the applicant;

(b) each municipality and government agency entitled to receive service of a copy of the application under subsection *70-806 (3)*;

(c) any person residing in a municipality entitled to receive service of

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a copy of the application under subsection *70-806(4)*; any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and

(d) the department.

(2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing *before the board.*"

Section 9. Section 70-809, R.C.M. 1947, is amended to read as follows:

"**70-809. Record of hearing — procedure — rules of evidence — burden of proof.** *(1)* Any studies, investigations, reports, or other documentary evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act *(Title 82, chapter 42, R.C.M. 1947)* shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(2) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of section 70-810 are met.

(3) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board or an employee of the department."

Section 10. Section 70-810, R.C.M. 1947, is amended to read as follows:

"**70-810. Decision of board — findings necessary for certificate — conditions imposed.** (1) *Within ninety (90) days after the last day of the hearing, the* board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the facility as the board *considers* appropriate. The board may not grant a certificate either as proposed *by the applicant* or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

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(d) each of the criteria listed in section *70-816*;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that *the* facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that *the facility* will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, *the* law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience and necessity; and

(h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(3) *In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(g) of this section, the board shall consider:*

(i) the items listed in subsections (1)(a) through (b) of this section;

(ii) the benefits to the applicant and the state resulting from the proposed facility;

(iii) the effects of the economic activity resulting from the proposed facility;

(iv) the effects of the proposed facility on the public health, welfare, and safety;

(v) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity, and demonstration thereof by the applicant, shall apply only to utility facilities."

Section 11. Section 70-811, R.C.M. 1947, is amended to read as follows:

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"**70-811. Opinion issued with decision — contents of certificate — waiver of time requirements — facilities for which certificate required.** (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to subsection *70-810 (1)(f)*, it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the *facility* being certified. The statement shall include, but not be limited to, analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed *facility*; and

(v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this *chapter* and the conditions of the certificate.

(3) *Any* of the provisions described in sections *70-807 through 70-811* may be waived by the board, for good cause shown, with respect to applications filed before January 1, 1975. Applications for certificates under this subsection must be promptly filed.

(4) (a) The board may waive compliance with any of the provisions of sections 70-807 through 70-811 if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of sections 70-807 through 70-811.

(b) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood or other natural disaster or as the result of insurrection, war or other civil disorder, and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare."

Section 12. Section 70-812, R.C.M. 1947, is amended to read as follows:

"**70-812. Judicial review of board decision.** Any party as defined in section *70-808* aggrieved by the final decision of the board on an application for a certificate may obtain judicial review *of that decision* by the filing of a petition in a state district court of competent jurisdiction.

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The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act."

Section 13. Section 70-813, R.C.M. 1947, is amended to read as follows:

"**70-813. Jurisdiction of courts restricted.** Except as expressly set forth in sections *70-812, 70-817, and 70-821,* no court of this state *has* jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this *chapter* or to stop or delay the construction, operation or maintenance of a facility, except to enforce compliance with this *chapter* or the provisions of a certificate issued hereunder pursuant to sections *70-819 or 70-821.*"

Section 14. Section 70-814, R.C.M. 1947, is amended to read as follows:

"**70-814. Annual long-range plan submitted — contents — available to public.** (1) Each utility, *and each person contemplating the construction of a facility within this state in the ensuing ten (10) years,* shall furnish annually to the department for its review, a long-range plan for the construction and operation of facilities. *The* plan shall be submitted on April 1 of each year, *and* shall include the following:

(a) the general location, size and type of all facilities to be owned and operated by the utility *or person* whose construction is projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) *in the case of utility facilities* a description of efforts by the utility *or person* to coordinate the plan with other utilities *or persons* so as to provide a coordinated regional plan for meeting the *energy* needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility *or person* and explanation of the basis for *those* projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the *board by rule or the* department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this *chapter.*

(2) The plan shall be made available to the public by the department, and the utility *or person* shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental *sciences,* the department of highways, the department of public service regulation, the department of state lands and the department of intergovernmental relations. Citizen

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environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor *to the department.*"

Section 15. Section 70-815, R.C.M. 1947, is amended to read as follows:

"**70-815. Study of planned facilities included in annual long-range report.** If a utility *or person* lists and identifies a proposed facility in its plan, submitted pursuant to section *70-814*, as one on which construction is proposed to be commenced within the five (5) year period *following* submission of the plan, the department shall commence examination and evaluation of the *proposed* site to determine whether construction of the proposed facility would unduly impair the environmental values in section *70-816*. This study may be continued until such time as a *person* files an application for a certificate under section *70-806*. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate."

Section 16. Section 70-816, R.C.M. 1947, is amended to read as follows:

"**70-816. Environmental factors considered in evaluating long-range plans.** In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors and may, by *rule*, add to the categories of this section:

(1) Energy needs.

(a) Growth in demand and projections of need.

(b) Availability and desirability of alternative sources of energy.

(c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.

(d) Promotional activities of the utility which may have given rise to the need for this facility.

(e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.

(f) Conservation activities which could reduce the need for more energy.

(g) Research activities of the utility of new technology available to it which might minimize environmental impact.

(2) Land use impacts.

(a) Area of land required and ultimate use.

(b) Consistency with areawide state and regional land use plans.

(c) Consistency with existing and projected nearby land use.

(d) Alternative uses of the site.

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(e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.

(f) Geologic suitability of the site or route.

(g) Seismologic characteristics.

(h) Construction practices.

(i) Extent of erosion, scouring, wasting of land—both at site and as a result of fossil fuel demands of the facility.

(j) Corridor design and construction precautions for transmission lines or aqueducts.

(k) Scenic impacts.

(l) Effects on natural systems, wildlife, plant life.

(m) Impacts on important historic architectural, archeological, and cultural areas and features.

(n) Extent of recreation opportunities and related compatible uses.

(o) Public recreation plan for the project.

(p) Public facilities and accommodation.

(q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.

(3) Water resources impacts.

(a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.

(b) Hydrologic studies of impact of facilities on ground water.

(c) Cooling system evaluation including consideration of alternatives.

(d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.

(e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.

(f) Relationship to water quality standards.

(g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights.

(h) Effects on plant and animal life, including algae, macroinvertebrates, and fish population.

(i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.

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(j) Monitoring programs.

(4) Air quality impacts.

(a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.

(b) Topography. Factors affecting dispersion.

(c) Standards in effect and projected for emissions, design capability to meet standards.

(d) Emissions and controls.

(i) Stack design.

(ii) Particulates.

(iii) Sulfur Oxides.

(iv) Oxides of Nitrogen.

(v) Heavy metals, trace elements, radioactive materials and other toxic substances.

(e) Relationship to present and projected air quality of the area.

(f) Monitoring program.

(5) Solid wastes impact.

(a) Solid waste inventory.

(b) Disposal program.

(c) Relationship of disposal practices to environmental quality criteria.

(d) Capacity of disposal sites to accept projected waste loadings.

(6) Radiation impacts.

(a) Land-use controls over development and population.

(b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.

(c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.

(d) Monitoring. Adequacy of devices and sampling techniques.

(7) Noise impacts.

(a) Construction period levels.

(b) Operational levels.

(c) Relationship of present and projected noise levels to existing and potential stricter noise standards.

(d) Monitoring. Adequacy of devices and methods."

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Section 17. Section 70-817, R.C.M. 1947, is amended to read as follows:

"**70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate — exceptions.** Notwithstanding any other law, no state or regional agency, or municipality or other local government, may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this *chapter*, except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. *This chapter does not* prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of *a* facility."

Section 18. Section 70-818, R.C.M. 1947, is amended to read as follows:

"**70-818. Revocation or suspension of certificate — voiding of application.** *(1)* A certificate may be revoked or suspended *by the board*:

(a) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or

(b) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(c) for violation of *any provision* of this *chapter*, the *rules* issued thereunder, or orders of the board or department.

(2) An application may be voided by the department:

(a) for any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(b) for failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(c) for failure to deposit the filing fee with the application as required by section 70-806."

Section 19. Section 70-819, R.C.M. 1947, is amended to read as follows:

"**70-819. Enforcement of chapter by residents of state — statement of failure to enforce act — mandamus — private suits for damages.** (1) A resident of this state, with knowledge that a requirement of this *chapter* or a rule adopted *under it* is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

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(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this *chapter* or a rule adopted *under it* is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a *person* to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a facility. *The remedies enumerated in this subsection do not exclude the use of any other remedy which may be available under the laws of the state.*"

Section 20. Section 70-820, R.C.M. 1947, is amended to read as follows:

"**70-820. Adoption of rules — monitoring of facilities.** (1) The board may adopt rules implementing the provisions of this *chapter, including, but not limited to, rules:*

(a) governing the form and content of applications;

(b) further defining the terms used in this chapter;

(c) governing the form and content of long-range plans;

(d) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter.

(2) The board and the department shall *monitor* the operations of all certificated facilities, for assuring continuing compliance with this *chapter* and certificates issued hereunder, and for discovering and preventing noncompliance with this *chapter* and *the* certificates.

(3) The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of *a* facility employing geothermal resources, to comply with the following requirements:

(a) Notify the department of the proposed action;

(b) Submit to the department a description of the area involved;

(c) Submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;

(d) Submit to the department geological data reports at such times as may be required by the rules; and

(e) Submit such other information as the board may require in the rules."

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Section 21. Section 70-821, R.C.M. 1947, is amended to read as follows:

"**70-821. Penalties for violation of chapter — civil action by attorney general.** (1) Whoever

(a) without first obtaining a certificate required under section *70-804, or a waiver thereof under section 70-811 (4)(b)* commences to construct or operate a facility; or

(b) having first obtained a certificate, constructs, operates or maintains a facility other than in compliance with the certificate; or

(c) violates any other provision of this chapter or any rule or order adopted thereunder, or knowingly submits false information in any report or application required by this chapter or rule or order adopted thereunder; or

(d) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars ($10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars ($10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsections (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it *may* refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce *this chapter* or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond. *The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.*

(4) All fines collected shall be deposited in the state general fund."

Section 22. Section 70-822, R.C.M. 1947, is amended to read as follows:

"**70-822. Grants, gifts and funds.** The department *may* receive grants, gifts and other funds from any public or private source, to assist in its activities under this *chapter.*"

Section 23. Section 70-823, R.C.M. 1947, is amended to read as follows:

"**70-823. Chapter supersedes other laws or regulations.** This *chapter* supersedes other laws or regulations. If any provision of this *chapter* is in conflict with any other law of this state, or any rule or regu-

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lation promulgated thereunder, this *chapter* shall govern and control, and *the* other law, rule or regulation shall be deemed superseded for the purpose of this *chapter.*"

Section 24. **Amendments not indicative of legislative interpretation of 1973 act — savings clause.** The amendments made by this act, or proposed to be made if this act should not be enacted, do not indicate an expression of legislative intent as to the interpretation of any provision of the Montana Utility Siting Act of 1973 as it existed prior to the introduction or enactment of this act. This act shall not affect the outcome of any judicial or quasi-judicial administrative proceeding commenced prior to the effective date of this act.

Section 25. **Applicability.** The amendments made by this act apply only to applications received by the department after January 1, 1975. Persons required to file long-range plans under the amendments made by section 14 of this act to section 70-814, R.C.M. 1947, shall have until June 1, 1975, to file such plans.

Section 26. This act is effective on its passage and approval.

Approved April 21, 1975.

CHAPTER NO. 495

AN ACT TO AMEND SECTIONS 10-706, AND 61-209, R.C.M. 1947, TO PROVIDE A SEPARATE PENALTY FOR PERSONS NOT REPORTING ADOPTIONS; PROVIDE AN ALTERNATIVE TO THE FINE AND LESSEN THE PENALTY FOR PROCURING ADOPTIONS WITHOUT A LICENSE AND TO REQUIRE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO INVESTIGATE CERTAIN ADOPTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-706, R.C.M. 1947, is amended to read as follows:

"**10-706. Penalties — procuring without a license — report to department.** *(1)* Any person who maintains or conducts an agency for procuring the adoption of minor children, or *assists* in the maintaining or conducting of such agency, without first *obtaining* a license, *is* guilty of a *misdemeanor* and upon conviction *shall* be punished by a fine not exceeding one thousand dollars *($1,000).*

(2) Upon the first conviction of a person for violation of this section, the court, instead of imposing the prescribed sentence, may enjoin the offender from any further action in violation of this section."

Section 2. Section 61-209, R.C.M. 1947, is amended to read as follows:

"**61-209. Investigation.** (1) Upon the filing of a petition for adoption the court *shall* order an investigation to be made by the state department

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of social and rehabilitation services or any other private agency licensed and approved for such investigatory purpose by the state department of social and rehabilitation services, *unless such investigation is waived by the department of social and rehabilitation services,* and *shall* in its discretion further order that a report of such investigation shall be filed with the court by the designated investigator within the time fixed by the court and in no event more than thirty (30) days from the issuance of the order for investigation, unless time therefor is extended by the court. Such investigation if ordered by the court shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) of this section located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of such investigation shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor."

Approved April 21, 1975.

CHAPTER NO. 496

AN ACT TO AMEND THE PRISONER FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH 95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 95-2217, R.C.M. 1947, is amended to read as follows:

"**95-2217. Prisoner furlough program — purpose and intent.** The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison; to increase their responsibility to society; to make it possible that they may, while serving their sentences, work gainfully to support their dependents in whole or in part; and providing for *the* minimum *hourly* wage *required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer* to be paid to said convicts while so employed; continue their education or training; and at the same time fulfill the obligations of the sentence of imprisonment imposed; plac-

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ing the establishment, regulation, guidance, and control of such program under the direction of the *department of institutions. The prisoner* program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law *and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes.* This act is to be liberally construed to effect the over-all objectives set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to read as follows:

"**95-2218. Definitions.** Unless the context requires otherwise, in this act:

(1) "*Department*" means the *department of institutions* provided for in section *82A-801*;

(2) "Board" means the board of pardons provided for in section 82A-804.

(3) "State prison" means the Montana state prison at Deer Lodge *and any adult correctional facility under the direction of the department*;

(4) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison;

(5) "Supervising agency" means any *federal, state, county, local or private agency, Indian tribe and reservation, or any person, group, association or organization approved by the department to undertake the supervision of prisoners participating in the furlough program*;

(6) "Jail" means any county jail *or tribal jail*;

(7) "Applicant" means any prisoner who has signed an application to participate in the prisoner furlough program."

Section 3. Section 95-2219, R.C.M. 1947, is amended to read as follows:

"**95-2219. Department to establish program and rules.** The *department* is authorized and directed to establish a furlough program and rules to implement and control the same. *Rules shall include provisions for*:

(1) Working at paid employment for a rate of pay not less than *the minimum hourly wage as required by law or the prevailing rate of pay for persons employed in similar occupations by the same employer;*

(2) Participating in an educational*, treatment,* or training program*;*

(3) Approval of supervising agency; and

(4) Review of determinations in furlough application."

Section 4. Section 95-2220, R.C.M. 1947, is amended to read as follows:

"**95-2220. Application for participation in furlough program.** Any prisoner confined in the state prison may make application to participate

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in the furlough program *at least by the time the inmate has served one-half (½) of the time required to be considered for parole.*"

Section 5. Section 95-2221, R.C.M. 1947, is amended to read as follows:

"**95-2221. Consideration of application — furlough plan — notification or consent of sheriff necessary — duties of board.** (1) *At the meeting of the board following the signing of any prisoner's application the* board shall approve or deny the application of *each* prisoner after careful study of the prisoner's *furlough plans*, criminal history, and all other pertinent case material. *The following rules shall be observed when the board meets to consider an application:*

(a) each applicant may call two (2) witnesses from outside or inside the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references;

(b) an applicant may remain present during the board proceedings on his application; however, the board may meet in executive session without the applicant for final decision on the application;

(c) the board shall cause the applicant to be notified of its decision immediately and shall provide the applicant with a written decision including a thorough statement of the reasons for the decision within two (2) days following adjournment;

(d) each applicant shall be viewed singly, and shall be recognized as an individual;

(e) each applicant shall be allowed to discuss any specific problem areas with any member of the board.

(2) If the application is approved, the *department* shall, *within the shortest possible time, locate an agency capable of supervising the applicant.*

(3) *The supervising agency, the department, and the applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a notary public, in triplicate, with one copy to be filed with the supervising agency and the department and one copy to be retained by the applicant.*

(4) Upon the signing of the agreement, the prisoner shall be released to the supervising agency.

(5) Final authority in all matters pertaining to prisoner furloughs is in the department.

(6) When an inmate is to reside in the county or tribal jail, the consent of the sheriff or tribal chief of police in the receiving county or reservation is necessary. However, when the inmate is to reside in a community corrections center or some other supervised setting the sheriff or tribal chief of police of the receiving county or reservation shall be notified.

(7) If the application is denied the prisoner may reapply after six (6)

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months' time. After an applicant has been denied three (3) times he may appeal to the department for a hearing."

Section 6. Section 95-2222, R.C.M. 1947, is amended to read as follows:

"**95-2222. Disposition of prisoner's earnings — trust fund — schooling costs.** (1) A prisoner employed in the community under a work furlough plan shall *enter into a written financial agreement with the supervising agency and the department concerning the acquisition and disposition of his earnings. This financial agreement shall provide for the payment of*:

(a) A standard charge for providing food, lodging and clothing for *the* prisoner *if incurred and if applicable*;

(b) The actual and necessary travel and other expenses of *the* prisoner under furlough from actual confinement under the program;

(c) *An* amount to pay for the support of his dependents, which amount shall be paid to *the* dependents; and

(d) *An* allowance for personal items, *and other expenses or disbursements agreed upon by the prisoner and the supervising agency.*

(2) *Unless the financial agreement specifically provides for other disbursement of the money, any* balance remaining after deductions and payments shall be deposited to an interest-bearing account held in trust for *the* prisoner and shall be paid to him upon release.

(3) *If no other sources of support are available, the* costs of a prisoner under furlough who is in training or school shall be the responsibility of the state."

Section 7. Section 95-2223, R.C.M. 1947, is amended to read as follows:

"**95-2223. Administrative rules — co-operation by state agencies.** (1) The *department* is authorized to make rules for the administration of the provision of this act *in accordance with Title 82, chapter 42, R.C.M. 1947.*

(2) All state, *county and local* agencies shall *be encouraged to* co-operate in the administration of the furlough program."

Section 8. Section 95-2224, R.C.M. 1947, is amended to read as follows:

"**95-2224. Prisoner not agent, or involuntary servant.** No prisoner in the community under the provisions of this act shall be deemed to be an agent, or involuntary servant of the *department or of the supervising agency* while released from confinement pursuant to the terms of the furlough program. *Abuse of this section shall be deemed official misconduct pursuant to 94-7-401, R.C.M. 1947.*"

Section 9. There is a new R.C.M. section numbered 95-2226.1 that reads as follows:

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95-2226.1. Responsibility of department and supervising agency — change or revocation of furlough — escape. (1) The department shall be responsible for the activities of a prisoner participating in a furlough program under this act. The department may delegate jurisdictional supervision of work furlough participants to the adult parole and probation field service. The supervising agency shall be responsible for those activities of a furloughed prisoner for which it is responsible in the written furlough agreement.

(2) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules and regulations of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency. If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, the prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists. The prisoner is entitled to have counsel appointed to represent him at the hearing. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under section 95-3220, R.C.M. 1947, pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison. At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has, in fact, violated the terms of the prisoner's furlough release. If it is determined that the prisoner has, in fact, violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out.

(3) If the department determines after having been advised by the supervising agency or the adult parole and probation field service, that a prisoner presents an immediate grave threat to the community in which he is furloughed, it may order the prisoner returned to prison before a hearing is held, but in this case a hearing on the charges against the prisoner, as provided for in the above subsection, must be held by the board no later than thirty (30) days after the return of the prisoner to the state prison.

(4) If, after a reasonable time, a furloughed prisoner determines that his furlough plan is unsatisfactory due to personality conflict, a violation of his rights by his supervisor, or a change of interest or employment status, the department shall grant him a hearing to determine whether or not a new furlough plan should be executed.

(5) If a prisoner, while not disabled from working by temporary illness, is unemployed for a period of thirty (30) days, or more, after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to any union to which the prisoner belongs, or if a prisoner has become so disabled as to be unemployable, or if a

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prisoner is on an educational furlough and has demonstrated for a period of six (6) weeks or more that he is unable to benefit from schooling, treatment, or training, then the prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training. At this conference the prisoner may request that supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference. If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may request a hearing by the board of pardons to determine an alternate proposal. In this hearing the prisoner is entitled to have counsel appointed to represent him. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the board shall order the prisoner returned to the prison.

(6) For the purpose of this act, the provisions relating to escape in section 94-7-306, R.C.M. 1947, shall apply, unless aggravating circumstances require a more severe penalty.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Section 95-2226, R.C.M. 1947, is repealed.

Approved April 21, 1975.

CHAPTER NO. 497

AN ACT TO GENERALLY UPDATE AND REVISE LAWS RELATING TO LICENSURE OF PLUMBERS; AMENDING SECTIONS 66-2401, 66-2401.1, 66-2402, 66-2403, 66-2404, 66-2406, 66-2411, 66-2415, 66-2416, 66-2419, 66-2420, AND 66-2426, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2401, R.C.M. 1947, is amended to read as follows:

"**66-2401. Plumbers — license required — exception.** *(1)* Any person working at the *field* of plumbing, in any incorporated city, town, *or in any other area served by a public water supply or a public sewer system* in this state, either as a master plumber or as a journeyman plumber, or who, while working at the *field* of plumbing, shall connect plumbing to or disconnect plumbing from a public *water supply or public sewer system*, shall first secure a state license as hereinafter provided. Provided that the council or commission of any city or town *or board of directors or managers of a water or sewer district or water utility*, in cases

where a duly licensed person *or persons are* not reasonably available, may, by ordinance, *rule or resolution* duly adopted, and upon reasonable notice to the board of *plumbers and upon their approval*, authorize the practice *in the field* of plumbing by *a person or* persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person *or persons are* reasonably available.

(2) Licensure is not required in the following instances of plumbing installation:

(a) Where an owner of a single family residence used exclusively for his personal use, makes the installation himself for all sanitary plumbing and potable water supply piping; or, where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) In any mine, mill, smelter, refinery, or railroad;

(c) In farms or ranches having their own private water supply and sewage disposal systems;

(d) In cities and towns extending their own city water and sewer mains;

(e) Installation of water conditioner services in private dwellings;

(f) Minor work by employees or agents of an appliance dealer, incidental to the installation of an appliance purchased from the dealer."

Section 2. Section 66-2401.1, R.C.M. 1947, is amended to read as follows:

"66-2401.1. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of plumbers, provided for in section 82A-1602.22;

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16;

(3) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves ten (10) or more families, or twenty-five (25) or more persons on a regular and continuous basis;

(4) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings, or any other facility that serves the public;

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto;

(6) "Master plumber" means a person who is authorized by this act to plan, estimate, bid, contract for, and supervise plumbing work; and

(7) "Field of plumbing" means the business, trade or work having to do with the installation, removal, alteration or repair of plumbing and drainage systems or parts thereof."

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Section 3. Section 66-2402, R.C.M. 1947, is amended to read as follows:

"**66-2402. Application for state license — qualifications of licensees.** (1) A person desiring to work at the business of plumbing in *the state of Montana* shall file his application for a license with the department, and shall at the time and place designated by the board, be examined as to his qualifications for working in this business.

(2) The following requirements shall be met by applicants for a license:

(a) For journeyman plumbers:

(i) A specific record of *four (4)* years experience in the field of plumbing, of a character satisfactory to the board. This experience requirement may be fulfilled by working *four (4)* years in a major phase of the plumbing business, or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending *an accredited* trade or other schools specializing in training of value in the *field of plumbing* and approved by the board.

(ii) Satisfactory completion of an examination conducted by the department, subject to section 82A-1603(4), testing the applicant's knowledge of techniques and methods employed in the *field of plumbing*, and establishing by practical demonstration his competence in the special skills required in *the field of* plumbing.

(iii) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

(b) For master plumbers:

(i) Evidence of *four (4)* years experience as a journeyman plumber *in the field of plumbing of a character satisfactory to the board.*

(ii) Evidence of three (3) years experience in supervisory capacities in the *field of plumbing, which may run concurrently with the requirement in (i) above.*

(iii) Satisfactory completion of an examination for master plumbers testing his knowledge of the *field of plumbing* and demonstrating his *skill and ability in the field of plumbing.*

(iv) A master plumber is not authorized to perform the work of a journeyman plumber unless he is also licensed as a journeyman plumber. A licensed master plumber may employ apprentice and only journeyman plumbers who are licensed by the state of Montana, in the conduct of his business and shall be responsible for assuring that all work performed by such employees shall be in compliance with the state plumbing code."

Section 4. Section 66-2403, R.C.M. 1947, is amended to read as follows:

"**66-2403. Compensation — examination of applicants.** (1) A

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member of the board is entitled to a compensation *in the amount* of twenty dollars ($20) *plus* per diem for each day while actually engaged in the work of the board.

(2) An applicant for a license to work *in the field* of plumbing shall be examined as to his qualifications by the department, subject to section 82A-1603(4). The department shall examine each applicant for a license, to determine his *skill and* qualifications *as* a master plumber or journeyman plumber. *The* applicant *upon* successfully *passing* the examination prescribed by the board, then *shall be issued* a license authorizing him to engage in the *field of plumbing as* a master plumber or journeyman plumber in *the* state *of Montana.*"

Section 5. Section 66-2404, R.C.M. 1947, is amended to read as follows:

"**66-2404. Application for license — information required — individual — firms or corporations.** A person, firm, or corporation desiring to engage in or work in the *field* of plumbing, either as a master plumber or as a journeyman plumber, in this state, shall *make application* to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience, and shall at a time and place designated by the board be examined as to his qualifications for *a* license. In the case of a firm or corporation, the examination and *issuance* of a license to *an individual* of the firm, or to *a principal* of the *firm or* corporation, satisfies the requirements of this act as to master plumbers, but not as to journeymen plumbers. *No individual, firm or corporation may* do the work of a master plumber unless licensed under this act.

A master plumber shall not allow his license to be used by any person, or firm, corporation, or business other than his own, for the purpose of obtaining permits, or for doing plumbing work under his license."

Section 6. Section 66-2406, R.C.M. 1947, is amended to read as follows:

"**66-2406. Apprentices — rules — record.** This act does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department *under the supervision of a licensed journeyman plumber only those apprentices registered with the state department of labor and industry will be recognized by the department.* The name and residence of each apprentice, and the names and residences of their employers, shall be filed with the department, and a record shall be kept by the department."

Section 7. Section 66-2411, R.C.M. 1947, is amended to read as follows:

"**66-2411. Penalty for violations — exceptions from act.** Any person working at the *field* of plumbing or maintaining or conducting a plumbing *business, or any individual* who *connects or disconnects* plumbing from a *public* water or sewer system in violation of any provisions of this act, or at a time when he is not exempt from the provisions of this act pursuant to the provisions of a duly enacted and subsisting ordi-

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nance of such city or town shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than ten dollars and not more than one hundred dollars for each separate offense; provided, however, that this act shall not be construed to apply to, or affect, plumbing or pipefitting *as indicated in the section 66-2401(2) and section 65-2426 exceptions.*"

Section 8. Section 66-2415, R.C.M. 1947, is amended to read as follows:

"**66-2415. Act not to impose penalties on hiring of unlicensed plumbers.** *This act shall not be construed as imposing any penalty on any person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who shall himself engage in the field of plumbing at a time when he is not duly licensed shall be subject to the penalties imposed by this act.*"

Section 9. Section 66-2416, R.C.M. 1947, is amended to read as follows:

"**66-2416. Minimum standards — state plumbing code — fee for copy of code.** (1) The board shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations *or maintenance, except where exempt by section 66-2426. Upon* approval of the *department of administration,* department of health and environmental sciences and the attorney general, and *upon* publication, the rules become the state plumbing code and have the force of law. A copy of the code shall be supplied to each person licensed under sections 66-2401 through 66-2411, or any other interested person, for *an amount equal to the actual current cost of the code plus postage.*

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state."

Section 10. Section 66-2419, R.C.M. 1947, is amended to read as follows:

"**66-2419. Revocation or suspension of license for work below minimum standards.** Any person, firm, or corporation licensed under the provisions of Title 66, chapter 24 of the laws of the state of Montana who performs plumbing work in *the field of plumbing,* below the minimum basic standards for plumbing as set forth in said state plumbing code *is subject to having* their license revoked or suspended by the state *board of plumbers.*"

Section 11. Section 66-2420, R.C.M. 1947, is amended to read as follows:

"**66-2420. Revocation or suspension — initiation of proceedings — procedure.** Proceedings for the revocation or suspension of a *journeyman or master* plumber's license may be taken by the board on its motion, for matters in its knowledge, or may be taken on the information of another. Accusations must be in writing, and verified by a party familiar with the facts charged. On receiving the accusation the board shall, if it considers the accusation sufficient, make an order setting it for hearing,

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and requiring the accused to appear and answer the charge or accusation at the hearing."

Section 12. Section 66-2426, R.C.M. 1947, is amended to read as follows:

"**66-2426. Exceptions from act.** This act shall not be construed to apply to, or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, *railroads*, or plumbing installations on farms having their own individual water supply or sewage disposal system."

Approved April 21, 1975.

CHAPTER NO. 498

AN ACT REQUIRING DISAPPROVAL OF ANY SUBDIVISIONS IN THE ABSENCE OF A DEMONSTRATED PUBLIC INTEREST; AMENDING SECTIONS 11-3860, 11-3861 AND 11-3866, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3860, R.C.M. 1947, is amended to read as follows:

"**11-3860. Statement of purpose.** It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to *require* development in harmony with the natural environment; *to require that approval of any subdivision be contingent upon a written finding of public interest by the governing body;* and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

Section 2. Section 11-3861, R.C.M. 1947, is amended to read as follows:

"**11-3861. Definitions.** As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

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(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

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(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels, containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

(13) "Occasional sale" means one sale of a division of land within any twelve (12) month period."

Section 3. Section 11-3866, R.C.M. 1947, is amended to read as follows:

"11-3866. Submission of subdivision plat to governing body — notice — hearing — approval — disapproval. (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

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Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest. To determine whether the proposed subdivision would be in the public interest the governing body shall issue written findings of fact which weigh the following criteria for public interest:

(a) the basis of the need for the subdivision;

(b) expressed public opinion;

(c) effects on agriculture;

(d) effects on local services;

(e) effects on taxation;

(f) effects on the natural environment;

(g) effects on wildlife and wildlife habitat, and

(h) effects on the public health and safety.

(5) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year."

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective date.** This act is effective upon passage and approval.

Approved April 21, 1975.

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CHAPTER NO. 499

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO THE CONSTITUTION TO REQUIRE THE LEGISLATURE TO DEDICATE A PORTION OF THE COAL SEVERANCE TAX TO A PERMANENT TRUST FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IX of the Montana constitution is amended by adding a new section 5 that reads as follows:

Section 5. Severance tax on coal — trust fund. The legislature shall dedicate not less than one-fourth (¼) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (¾) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

Section 2. When this amendment is submitted to the qualified electors of Montana, there shall be printed on the ballot the full title and section 1 of this act and the following words:

"☐ For a permanent trust fund from coal taxes.

☐ Against a permanent trust fund from coal taxes."

Approved (Constitutional Amendment).

CHAPTER NO. 500

AN ACT MAKING SURVIVING SPOUSES OF SILICOTICS ELIGIBLE FOR PAYMENTS IF WIDOWED PRIOR TO MARCH 14, 1974.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-1010.1 that reads as follows:

71-1010.1. Prior surviving spouses eligible for silicosis payments. A person who otherwise is qualified to receive payments under section 71-1010, but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half (½) of those payments; provided however, a person is not eligible for these payments if her taxable income is sixty-eight hundred dollars ($6,800) or more per year.

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Approved April 29, 1975.

CHAPTER NO. 501

AN ACT CREATING A FUND FOR RESEARCH, DEVELOPMENT AND DEMONSTRATION OF ALTERNATIVE ENERGY SOURCES AND ALLOCATING CERTAIN REVENUE FROM COAL TAXES TO THE FUND; DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO MAKE GRANTS FROM THE FUND IN SUPPORT OF ALTERNATIVE ENERGY RESEARCH; PROVIDING FOR AN ALTERNATIVE ENERGY ADVISORY COMMITTEE; MAKING APPROPRIATIONS; AMENDING SECTION 84-1309.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7407 that reads as follows:

84-7407. Purpose. The purposes of this act are to stimulate research, development, and demonstration of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability, and to provide for the funding and administration of such research, provided that demonstration or development projects funded under this act may not be used to commercially market electricity, heat energy, or energy by-products.

Section 2. There is a new R.C.M. section numbered 84-7408 that reads as follows:

84-7408. Definitions. As used in this act:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Person" means a natural person, corporation, partnership, or other business entity, association, trust, foundation, any educational or scientific institution, or any governmental unit.

(3) "Department" means the Montana department of natural resources and conservation.

Section 3. There is a new R.C.M. section numbered 84-7409 that reads as follows:

84-7409. Alternative energy research development and demon-

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stration account established. There is within the earmarked revenue fund an alternative energy research development and demonstration account. Moneys are paid into this account under section 84-1309.1. The state treasurer shall draw warrants payable from this account upon order of the department.

Section 4. Section 84-1309.1, R.C.M. 1947, is amended to read as follows:

"**84-1309.1. Disposal of license taxes.** License taxes collected under the provisions of this chapter *or severance taxes collected under such statutes as may be enacted in 1975* are allocated as follows:

(1) To the county general fund from which coal was mined three cents (3¢) per ton.

(2) Two and one-half percent (2 ½%) of total collections per year until December 31, 1979 and thereafter four percent (4%) of total collections per year to the earmarked revenue fund, to the credit of the alternative energy research development and demonstration account.

(3) All other revenues from license taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state."

Section 5. There is a new R.C.M. section numbered 84-7410 that reads as follows:

84-7410. Department — general powers. The department may:

(1) employ a staff adequate to administer this act;

(2) retain professional consultants and advisors;

(3) adopt rules governing applications and granting of funds;

(4) consider applications for grants and award grants, subject to the availability of funds, and to the appropriation of such funds by the legislature from the alternative energy research development and demonstration funds for projects that will further the purposes of this act;

(5) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy matters. The appointment of any such advisory committee shall be in keeping with section 82A-110.

Section 6. There is a new R.C.M. section numbered 84-7411 that reads as follows:

84-7411. Applications for grants. Any person may apply for a grant to enable him to research, develop or demonstrate alternative renewable energy sources. The department shall prescribe the form for applications. Applicants shall describe the nature of their proposed investigations, including practical applications of the possible results and time requirements.

Section 7. There is a new R.C.M. section numbered 84-7412 that reads as follows:

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84-7412. Criteria for grant awards. The department may award grants to applicants under section 84-7411 in accordance with the following criteria:

(1) A grant may cover a period not exceeding one (1) year, and the department may not commit itself to spending funds anticipated to be available more than one (1) year after the grant period begins. The department may give an applicant a statement of intent to renew its support of his work, subject to the availability of funds and such other conditions as the department may express.

(2) The department may give preference to projects which are also supported by grants from the federal government or other persons provided the grants are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy research development and demonstration account for matching moneys in order to support more substantial research.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public and shall not become the private property of or under the exclusive control of any one (1) company or person.

(6) The department is under no requirement to expend or commit available alternative energy research, development and demonstration funds when in its judgment such expenditures or commitments would be unproductive.

Section 8. There is a new R.C.M. section numbered 84-7413 that reads as follows:

84-7413. Biennial report. The department shall report its expenditures and other activities under this act to the legislature at the beginning of each regular legislative session.

Section 9. There is appropriated to the department of natural resources and conservation from the alternative energy research development and demonstration account, for the purpose of publicizing tax incentives for alternative energy development and energy conservation under House Bill 663, as enacted, not to exceed fifteen thousand dollars ($15,000), for the fiscal year ending June 30, 1976, and for making grants under section 7 of this act all the remaining funds in the alternative energy research development and demonstration account for the biennium ending June 30, 1977.

Approved April 29, 1975.

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CHAPTER NO. 502

AN ACT CREATING FUNDS FOR ASSISTING LOCAL GOVERNMENTS AND HIGHWAY SYSTEMS IMPACTED BY COAL DEVELOPMENT AND FOR THE SUPPORT OF PUBLIC SCHOOLS THROUGHOUT THE STATE; CREATING A FUND TO SUPPORT COUNTY PLANNING; ALLOCATING CERTAIN REVENUE FROM COAL TAXES TO THE FUNDS; ESTABLISHING A BOARD TO MAKE GRANTS TO LOCAL GOVERNMENTS; AUTHORIZING THE DEPARTMENT OF COMMUNITY AFFAIRS TO SUPPORT COUNTY PLANNING; DIRECTING THE DEPARTMENT OF HIGHWAYS TO RECONSTRUCT CERTAIN ROADS; ESTABLISHING A LEGISLATIVE REVIEW COMMITTEE; MAKING APPROPRIATIONS; AMENDING SECTIONS 75-6916 AND 84-1309.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 50-1701 that reads as follows:

50-1701. Purpose. The purposes of this act are to assist local governmental units which have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes, to assist in the construction and reconstruction of designated portions of highways which serve the area affected by such large-scale development, to support county land planning, and to invest a portion of the tax revenue from coal mines in a permanent fund, the income from which shall be used for the support of public schools throughout the state.

Section 2. There is a new R.C.M. section numbered 50-1702 that reads as follows:

50-1702. Local impact and education trust fund account and coal area highway improvement account established. (1) There is within the earmarked revenue fund a local impact and education trust fund account. Moneys are payable into this account under section 84-1309.1. The state treasurer shall draw warrants from this account upon order of the coal board.

(2) There is within the earmarked revenue fund a coal area highway improvement account.

Section 3. Section 84-1309.1, R.C.M. 1947, is amended to read as follows:

"84-1309.1. Disposal of license or severance taxes. License *or severance* taxes collected under the provisions of this chapter *or such sections as may enact a severance tax on coal in 1975* are allocated as follows:

(1) To the county *for such purposes as the governing body of that county may determine* from which coal was mined *for each calendar year*

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prior to January 1, 1980, three cents (3¢) per ton *or four percent (4%) of the severance tax paid on the coal mined in that county, whichever is higher, and for each calendar year following December 31, 1979, three cents (3¢) per ton or three and one-half percent (3 ½%) of the severance tax paid on the coal mined in that county, whichever is higher.*

(2) Twenty-seven and one-half percent (27.5%) of total collections per year, until July 1, 1979, and thereafter thirty-five percent (35%), to the earmarked revenue fund to the credit of the local impact and education trust fund account.

(3) For each of the four (4) fiscal years following the effective date of this act ten percent (10%) of total collections per year to the earmarked revenue fund to the credit of the coal area highway improvement account.

(4) Ten percent (10%) of total collections per year, to the earmarked revenue fund, for state equalization aid to public schools of the state.

(5) For the period ending December 31, 1979, one percent (1%) of total collections per year to the earmarked revenue fund, to the credit of the county land planning account.

(6) Two and one-half percent (2 ½%) of total collections per year to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account.

(7) Two and one-half percent (2 ½%) of total collections per year, to the sinking fund, to the credit of the renewable resource development bond account.

(8) Two and one-half percent (2 ½%) of total collections per year through June 30, 1979, of which portion one-half (½) shall be allocated to the earmarked revenue fund, for the purpose of acquisition of sites and areas described in section 62-304, subject to legislative appropriations, and one-half (½) shall be allocated to the trust and legacy fund, for the purpose of parks acquisition. After June 30, 1979, five percent (5%) of total collections per year shall be allocated to the trust and legacy fund, for the purpose of parks acquisition. Income from the fund established in this subsection may be appropriated for the acquisition of sites and areas described in section 62-304.

(9) All other revenues from license taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state."

Section 4. There is a new R.C.M. section numbered 50-1703 that reads as follows:

50-1703. Coal area highway reconstruction program. (1) There is appropriated to the department of highways for each of the four (4) fiscal years following the effective date of this act all the funds in the coal area highway improvement account for carrying out the programs authorized by this section.

(2) The department of highways, within the area designated as the eastern Montana coal field economic growth center as certified to the

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secretary of transportation by the governor under section 143, Title 23, United States Code, shall prepare a special construction program for the reconstruction of deficient sections of these highways.

(3) The department of highways shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this subsection and any federal funds that may be made available to match such funds; until federal funds are made available to match the funds allocated under this subsection the department of highways may, upon approval of the Montana state highway commission, expend such funds for planning and reconstruction projects.

(4) Funds allocated under this subsection shall not be used to match apportionments made for primary and secondary highways under the Federal Aid Highway Acts; however, nothing in this subsection should be construed to prohibit the implementation of projects otherwise funded by apportionments made under the Federal Aid Highway Acts; furthermore, planning and reconstruction projects may be financed in whole or in part by public and private funds provided such projects conform to the applicable standards, regulations and procedures of the department of highways and the federal highway administration.

Section 5. There is a new R.C.M. section numbered 50-1704 that reads as follows:

50-1704. Coal board established — composition. (1) There is a coal board composed of seven (7) members.

(2) The coal board is allocated to the department of community affairs for administrative purposes only as prescribed in section 82A-108.

(3) The members of the coal board are selected as follows:
The governor shall appoint a seven (7) member coal board, two (2) from the impact areas and two (2) with expertise in education. The governor shall further, in making these appointments, consider people from these fields: business, engineering, public administration and planning. No more than four (4) members may be residents of the same congressional district.

Section 6. There is a new R.C.M. section numbered 50-1705 that reads as follows:

50-1705. Chairman — meetings — compensation. (1) The board shall elect a chairman from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the chairman or a majority of the members.

(3) Members are entitled to compensation as provided for in section 82A-112(7).

Section 7. There is a new R.C.M. section numbered 50-1706 that reads as follows:

50-1706. Coal board — general powers. The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account; and

(4) award grants, subject to section 50-1707, not to exceed in any one year seven-elevenths (7/11), and after June 30, 1979, three-sevenths (3/7) of the revenue paid into the local impact and education trust fund account, to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Such grants shall be awarded on the basis of (a) need, (b) degree of severity of impact from the coal development, (c) availability of funds, and (d) degree of local effort in meeting these needs. The board shall formulate guidelines to evaluate degree of local effort, considering bond issues and millage levels. To the extent funds are needed to evaluate and plan for the impact needs caused by coal development, consideration of bond issues and millage levies may be waived.

Section 8. There is a new R.C.M. section numbered 50-1707 that reads as follows:

50-1707. Priorities for impact grants. (1) The department of community affairs shall designate counties, towns, school districts and other governmental units which have had or expect to have an increase in estimated population of at least ten percent (10%) during any three (3) years since 1972 as a result of the impact of coal development. The coal board shall, subject to the appropriations of the legislature, award at least fifty percent (50%) of all grants awarded to governmental units and state agencies for meeting the needs caused by coal development each year to these designated governmental units.

(2) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an over all plan for the orderly management of the existing or contemplated growth problems.

(3) All funds placed in the local impact and educational trust fund account established under this act, subject to the limitations imposed by section 50-1710, shall be subject to appropriations by the legislature for use related to local impact or for transfer to a permanent trust for education.

Section 9. There is a new R.C.M. section numbered 50-1708 that reads as follows:

50-1708. Office facilities and staff. The department of community affairs will provide suitable office facilities and the necessary staff for the coal board.

Section 10. There is a new R.C.M. section numbered 50-1709 that reads as follows:

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50-1709. Applications for grants. The governing body of a city, town, county, or school district or any other local or state governmental unit or agency may apply for a grant to enable it to provide governmental services which are needed as a direct consequence of coal development. The coal board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved. The board may commit itself to the expenditure of funds for more than one (1) year for a single project, as long as the grant does not extend over more than ten (10) years and does not exceed reasonable revenue expectations. No state agency may receive grants which exceed five percent (5%) of the money allocated to the board.

Section 11. There is a new R.C.M. section numbered 50-1710 that reads as follows:

50-1710. Disposition of interest from unexpended balance. The unexpended balance in the local impact and education trust fund account shall be invested as provided by statute by the state board of investments. Ten percent (10%) of the income from such investments each year shall be added to the principal of the account to be segregated and held in trust for the purposes of supporting the public schools and university systems of the state. Of the remaining ninety percent (90%) of the income from such investments, three-fourths (¾) shall be annually paid into the earmarked revenue fund, for state equalization aid to public schools of the state and one-fourth (¼) each year shall be paid to the board of regents of higher education for use by the institutions of higher learning in the state of Montana subject to the budgeting authority of the legislature. Except as provided in section 6(5) [50-1706(4)] herein the principal of the local impact and educational trust fund shall be dedicated to education and forever remain inviolate and sacred to this purpose as provided in sections 3 and 10 of this Article X of the Montana constitution.

Section 12. Section 75-6916, R.C.M. 1947, is amended to read as follows:

"75-6916. Definition of and revenue for state equalization aid. The following shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state:

(1) twenty-five per cent (25%) of all moneys received from the collection of income taxes under chapter 49 of Title 84, R.C.M. 1947,

(2) twenty-five per cent (25%) of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R.C.M. 1947, as provided by section 84-1901, R.C.M. 1947,

(3) ten percent (10%) of the moneys received from the collection of the severance tax on coal under chapter 13 of Title 84, R.C.M. 1947,

(4) one-half (½) of the moneys received from the treasurer of the United States as the state's shares of oil and gas royalties under the Act of Congress of February 25, 1920,

(5) interest and income moneys described in sections 75-6907 and 75-6908, R.C.M. 1947,

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(6) income from the local impact and education trust fund account, and

(7) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to sections 75-6912 and 75-6913 shall be paid into the same earmarked revenue fund.

As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program."

Section 13. There is appropriated to the coal board for its expenses and for making grants under section 7 of this act, seven-elevenths (7/11) of the funds in the local impact and education trust fund account for the biennium ending June 30, 1977. The coal board shall transfer funds from this appropriation to the select legislative review committee created in section 15 of this act, such sums as the committee determines to be necessary to carry out its functions. The committee may reimburse the legislative auditor or legislative council from these funds for services provided the committee.

Section 14. There is a new R.C.M. section numbered 82-3710 that reads as follows:

82-3710. County land planning assistance. (1) The department of community affairs shall annually distribute to all the counties in the state the funds in the county land planning account. The funds shall be apportioned forty percent (40%) on the ratio of each county's portion of the total land area of the state and sixty percent (60%) on the ratio of each county's portion of the total population of the state.

(2) Counties receiving funds under this section shall use such funds for the purposes of making inventories of land categories within their boundaries and of classifying lands for taxation and planning programs.

(3) There is appropriated to the department of community affairs for the purposes of this section all the funds in the county land planning account for the biennium ending June 30, 1977.

(4) At the end of each fiscal year the governing body of the affected county shall provide an accounting of how the moneys were spent in a form acceptable to the department of community affairs. Any surplus of prorated funds shall revert to the education trust fund account.

Section 15. Legislative review committee. (1) There is a select interim committee of the legislature, composed and appointed as provided under section 43-716, R.C.M. 1947, from the standing committees on taxation.

(2) The select committee shall review the programs authorized under Senate Bill 86, Senate Bill 87, and House Bill 642, as such programs are established and implemented. The select committee may also review the impact of the severance and gross proceeds taxes upon the coal industry.

(3) The departments of revenue, highways, natural resources and conservation, and community affairs, and the coal board shall furnish the

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select committee such information as the committee may require. The select committee may require that some or all of the grant or loan applications received under Senate Bill 86, Senate Bill 87, or House Bill 642, together with the proposed action thereon, be referred to the committee before the agency takes final action on such applications.

(4) The legislative auditor, the legislative council, or both, shall furnish professional and clerical staff assistance to the select committee.

(5) The select committee may make such recommendations as it deems proper, at any time to the departments of revenue, highways, natural resources and conservation, and community affairs, and the coal board, and to the forty-fifth legislature prior to the convening thereof.

Approved April 29, 1975.

CHAPTER NO. 503

AN ACT TO REGULATE THE MAXIMUM RATE OF INTEREST WHICH PARTIES MAY AGREE TO IN WRITING, AMENDING SECTION 47-125, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 47-125, R.C.M. 1947, is amended to read as follows:

"**47-125. Same rate allowed by agreement.** *On amounts up to one hundred fifty thousand dollars ($150,000) parties* may agree in writing for the payment of any rate of interest not *more than ten percent (10%) per annum or more than four (4) percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater*, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment. *On amounts exceeding one hundred fifty thousand dollars ($150,000) and up to three hundred thousand dollars ($300,000) parties may agree in writing for the payment of any rate of interest not more than ten percent (10%) per annum or more than five (5) percentage points in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district, whichever is greater, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment. On amounts exceeding three hundred thousand dollars ($300,000) parties may agree in writing to the payment of any rate of interest, without limitation, and such interest shall be allowed, according to the terms of the agreement, until the entry of judgment.*"

Section 2. This act is effective on its passage and approval.

Approved April 29, 1975.

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CHAPTER NO. 504

AN ACT CREATING A BOARD OF WARM AIR HEATING, VENTILATION, AND AIRCONDITIONING; PROVIDING FOR THE LICENSING OF PERSONS PERFORMING WARM AIR HEATING, VENTILATING, OR AIR CONDITIONING WORK; AND AMENDING SECTION 69-2111, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82A-1602.29 that reads as follows:

82A-1602.29. Board of warm air heating, ventilation, and air conditioning — appointment — qualifications — term. (1) There is a state board of warm air heating, ventilation, and air conditioning.

(2) The board consists of seven (7) members, appointed by the governor. The members are:

(a) two (2) master and two (2) journeyman mechanics, who shall be over the age of majority and residents of Montana for at least one (1) year. After the first board, each mechanic shall have been licensed pursuant to this act at least two (2) years immediately preceding his appointment;

(b) one (1) representative of the department of administration responsible for the administration of Title 69, chapter 21, who shall act as secretary;

(c) one (1) attorney from the department; and

(d) one (1) representative of the state fire marshal's office.

(3) Each member shall serve for a period of four (4) years, provided, however, that four (4) members of the first board shall serve as follows:

(a) one (1) master and one (1) journeyman for two (2) years; and

(b) one (1) master and one (1) journeyman for three (3) years.

(4) Each member of the board is entitled to twenty-five dollars ($25) per day for each day served discharging his board duties, together with a per diem and mileage expense allowance pursuant to sections 59-801 and 59-538. No member of the board shall be allowed compensation in addition to his present compensation from the state.

(5) A majority of the members of the board constitute a quorum necessary for the transaction of business.

(6) The board shall meet at least semiannually.

Section 2. There is a new R.C.M. section numbered 66-3501 that reads as follows:

66-3501. Short title. This act is to be known and referred to as the "Heating, Ventilation, and Air Conditioning Act".

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Section 3. There is a new R.C.M. section numbered 66-3502 that reads as follows:

66-3502. Purpose. It is hereby declared to be the purpose of this act to protect the people of Montana from health, life, financial, and other hazards resulting from irresponsible service methods, unethical practices, inferior installation, maintenance and repair of warm air heating, ventilation, and air conditioning systems and equipment.

Section 4. There is a new R.C.M. section numbered 66-3503 that reads as follows:

66-3503. Definitions. As used in this act:

(1) "Board" means board of warm air heating, ventilation and air conditioning, provided for in section 82A-1602.29.

(2) "Department" means the department of professional and occupational licensing.

(3) "Warm air heating, ventilation, and air conditioning work" means construction, installation, alteration, maintenance and repair of all warm air heating systems complete with warm air appliances, ducts, registers and flues with or without air filters, humidity and thermostatic controls; ventilating systems complete with blowers, ducts, plenum chambers, registers, with or without air filters, humidity and thermostatic controls; air conditioning systems, complete with air conditioning units, ducts, registers, air filters, humidity and thermostatic controls; and all equipment for air heating, ventilating, and air conditioning; blower and exhaust appliances and systems; and domestic and commercial forced air heating equipment. Warm air heating, ventilation, and air conditioning work does not include any portable heating, ventilating or air conditioning equipment, which does not become affixed to real property; and masonry fireplaces and component parts with masonry flues.

Section 5. There is a new R.C.M. section numbered 66-3504 that reads as follows:

66-3504. Powers and duties of board. In addition to all other powers and duties conferred and imposed upon the board by law, the board shall have and exercise the following powers and duties:

(1) to promulgate rules which it determines to be necessary to carry out the provisions of this act;

(2) to hear contested cases coming under the provisions of this act; and

(3) to establish how permit fees are to be collected and allocated under applicable state and local building codes.

Section 6. There is a new R.C.M. section numbered 66-3505 that reads as follows:

66-3505. Earmarked account. Money paid for license and equipment fees under this act shall be deposited in an earmarked revenue account for the use of the board, subject to section 82A-1603(6).

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Section 7. There is a new R.C.M. section numbered 66-3506 that reads as follows:

66-3506. Examination of applicant for license. An applicant for a license to engage in warm air heating, ventilation, or air conditioning work shall be examined as to his qualifications by the department, subject to section 82A-1603(4). The department shall examine each applicant for a license, to determine his qualifications and fitness for carrying on warm air heating, ventilation, or air conditioning work, as a master or journeyman, and if the applicant successfully passes the examination prescribed by the board, then a license shall be issued to the applicant authorizing him to engage in warm air heating, ventilation, or air conditioning work as a master or journeyman in the state, subject to other provisions of this act.

Section 8. There is a new R.C.M. section numbered 66-3507 that reads as follows:

66-3507. Persons exempt from examination. Persons fulfilling the qualifications for applicants for licenses as hereinafter provided prior to July 1, 1975, and who are then actively engaged in warm air heating, ventilation, and sheet metal work, shall not be required to take an examination, but shall be issued a license by the board upon payment of the proper license fee before January 1, 1976, and upon posting a bond as herein provided in the case of a master licensee.

Section 9. There is a new R.C.M. section numbered 66-3508 that reads as follows:

66-3508. Requirements for licensure. The following requirements shall be met by applicants for a state license:

(1) Masters shall furnish evidence of five (5) years experience in warm air heating, ventilation, and air conditioning work satisfactory to the board.

(2) Journeyman mechanics shall furnish evidence of four (4) years experience in warm air heating, ventilation, and air conditioning work which is satisfactory to the board. This experience requirement may be fulfilled by working four (4) years in any major phase of the warm air heating, ventilation, and air conditioning business, or by completing an apprenticeship program meeting the standards set by the Montana state apprenticeship council or United States department of labor, bureau of apprenticeship, and credit towards this experience requirement shall be given for time spent in attending trade or other schools specializing in training in the warm air heating, ventilation, and air conditioning business and approved by the board.

(3) For apprentice mechanics:

(a) registration by the board and the Montana apprenticeship council as an apprentice;

(b) working under the direct and personal supervision of a duly licensed journeyman, learning the business of warm air heating, ventilation, and air conditioning; and

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(c) apprentices qualifying hereunder shall be issued apprentice permits by the board.

Section 10. There is a new R.C.M. section numbered 66-3509 that reads as follows:

66-3509. License fees — examination fees. Each applicant for a master license shall pay a seventy-five dollar ($75) application fee, and each applicant for a journeyman's license shall pay a thirty-five dollar ($35) application fee. All licenses and renewals expire on July 1 of each year. Renewal fees shall be set annually by the board and may not exceed the application fees. Examination fees shall be set by the board but not to exceed fifty dollars ($50) for a master examination and twenty-five dollars ($25) for a journeyman examination.

Section 11. There is a new R.C.M. section numbered 66-3510 that reads as follows:

66-3510. Bond to be deposited with board. A master license may not be issued until the applicant has deposited with the board a bond, approved by the board, in the amount of fifteen thousand dollars ($15,000), or cash in lieu thereof, running to the state of Montana for the use and benefit of any person who might have a cause of action of any nature arising from or out of work performed or installations of equipment by the master licensee or the firm with which he is associated. Any person having a cause of action may join the firm with which the master is associated and the surety on the bond in the same action, or may in such action sue either the firm or the surety alone. The term "cause of action" shall be construed to include claims for expenses incurred in correcting work which is not in conformance with the applicable heating, ventilation, and air conditioning code. The bond requirement may be waived, if masters can provide adequate liability insurance, one hundred thousand dollars ($100,000) or more, and furnish to the board precancellation notice, satisfactory to the board.

Section 12. There is a new R.C.M. section numbered 66-3511 that reads as follows:

66-3511. Display of license. The board shall issue a license of a design approved by the board to each licensee. A person licensed shall display the license in plain view in his place of business and if he is performing services away from his place of business, he shall present identification issued by the board showing his license number. Licenses are not transferable.

Section 13. There is a new R.C.M. section numbered 66-3512 that reads as follows:

66-3512. Revocation or suspension of license. Any licensee who performs, or any master licensee whose associated firm performs warm air heating, ventilation, and air conditioning work in any building whatsoever, below the standards set by the applicable warm air heating, ventilation, and air conditioning code, may have his license revoked or suspended by the board. Proceedings for the revocation or suspension of a license may be commenced by the board upon its own motion, or upon

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motion of any person. All complaints must be in writing, verified and filed with the department. The board may deem the complaint sufficient as received or require further investigation. When a complaint is deemed sufficient by the board, it shall provide for a hearing, at a specified time and place, and the department shall cause a true copy of notice of hearing and of the complaint to be served upon the licensee at least ten (10) days before the day appointed in the order for hearing.

Section 14. There is a new R.C.M. section numbered 66-3513 that reads as follows:

66-3513. Unlawful conduct. It shall be unlawful:

(1) for any person or firm to perform, or to establish a place of business to perform, or to advertise for, warm air heating, ventilation, or air conditioning work for another unless such person, or a full partner or ten percent (10%) or more shareholder of such firm, shall have first obtained a master license hereunder, provided, that any person who is licensed as a journeyman may perform such work for a master licensee or a firm with which a master licensee is associated; and

(2) for equipment to be installed in this state unless evidence of permit fee payment is attached in the manner prescribed by the board.

Section 15. There is a new R.C.M. section numbered 66-3514 that reads as follows:

66-3514. Penalty. Any person or firm convicted of violating the provisions of section 66-3513 shall be fined not less than twenty dollars ($20) and not more than five hundred dollars ($500) for each separate offense. A person engaged in warm air heating, ventilation, or air conditioning work after July 1, 1975, and who applies for a license prior to January 1, 1976, is not in violation of this act until his application for licensure is denied.

Section 16. There is a new R.C.M. section numbered 66-3515 that reads as follows:

66-3515. Exemptions from act. The provisions of this act do not apply or affect work done:

(a) by a homeowner on either his family dwelling or outbuildings or both of them or person doing routine maintenance in his place of business or rental housing;

(b) to provide fuel or refrigeration pipe lines, when lines are connected to the installation of heating, ventilating and air conditioning systems; or

(c) by railroads, smelters, underground mining operations, mills or refineries on their properties, by self or employees or other businesses doing their own routine maintenance.

Section 17. Section 69-2111, R.C.M. 1947, is amended to read as follows:

"**69-2111. Adoption of rules by department.** (1) The department

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shall adopt by reference nationally recognized building codes in whole or in part, amend and repeal rules relating to the construction of all buildings or classes of buildings or the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings including provisions dealing with safety and sanitation. The rules, when adopted as provided in this chapter, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable.

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the department.

(4) If a hearing has been held by the department of justice with respect to its duties contained in Title 82, chapter 12, the board of plumbers, the department of health and environmental sciences, *board of warm air heating, ventilation, and air conditioning,* or state electrical board, on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences, *board of warm air heating, ventilation, and air conditioning,* or state electrical board which conflicts with the state building code, the department shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected."

Approved April 29, 1975.

CHAPTER NO. 505

AN ACT TO AMEND SECTION 34-304, R.C.M. 1947, BY PROVIDING A TWENTY DOLLAR ($20) LICENSE FEE FOR A HOTEL, MOTEL, TOURIST HOME, RETIREMENT HOME, OR ROOMING HOUSE AND PARTICIPATION IN THE FEE BY LOCAL BOARDS OF HEALTH; AMENDING SECTION 34-305, R.C.M. 1947, BY PROVIDING FOR HEARING BEFORE THE DEPARTMENT; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 34-304, R.C.M. 1947, is amended to read as follows:

"**34-304. Fee—term of license.** (a) There shall be paid to the department with each application for such license or for renewal of such license,

an annual license fee of *twenty* dollars *($20)*. These fees shall be deposited with the state treasury to the credit of the general fund.

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transferable nor be applicable to any premises other than that for which originally issued.

(c) Before June 30 of each year, the department shall pay to a local board of health as established under section 69-4504, 69-4506, or 69-4507, R.C.M. 1947, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local board of health, and the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(d) Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this section. The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under section 69-4508, R.C.M. 1947."

Section 2. Section 34-305, R.C.M. 1947, is amended to read as follows:

"34-305. Cancellation or denial of license— procedure. (1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this act or a rule effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

(2) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the *department* to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When a multiple type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(4) On cancellation of a license or the right to operate one or more of the multiple type establishments under same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

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(5) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or a rule effective under this act."

Section 3. This act is effective January 1, 1976.

Approved April 29, 1975.

CHAPTER NO. 506

AN ACT TO AMEND SECTION 69-5604, R.C.M. 1947, BY PROVIDING A TWENTY DOLLAR ($20) LICENSE FEE FOR TOURIST CAMPGROUNDS AND TRAILER COURTS AND PARTICIPATION IN THE FEE BY LOCAL BOARDS OF HEALTH; AMENDING SECTION 69-5606, R.C.M. 1947, BY PROVIDING THE PROCEDURE FOR CANCELLATION OR DENIAL OF A TOURIST CAMPGROUND OR TRAILER COURT LICENSE; AMENDING SECTION 69-5607, R.C.M. 1947, BY PROVIDING FOR INCREASED PENALTIES ON SECOND AND THIRD CONVICTIONS; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-5604, R.C.M. 1947, is amended to read as follows:

"**69-5604. Application for license — form and contents — license fee — duration of license.** *(1)* Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of *twenty* dollars *($20)*. Licenses expire on December 31 of the year in which they are issued. Fees collected by the department shall be deposited in the state general fund.

(2) Before June 30 of each year, the department shall pay to a local board of health as established under section 69-4504, 69-4506, or 69-4507, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local board of health, and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(3) Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction which are licensed under this section. The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under section 69-4508."

Section 2. Section 69-5606, R.C.M. 1947, is amended to read as follows:

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"**69-5606. Cancellation or denial of license — procedure.** *(1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.*

(2) A license may not be denied or cancelled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or cancelled. In this case, the licensee must make a written request to the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter, or a rule effective under this chapter."

Section 3. Section 69-5607, R.C.M. 1947, is amended to read as follows:

"**69-5607. Violations and penalty—disposition of fines.** *Any person violating any provision of this chapter or regulation made under it shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) for the first offense, and not less than seventy-five dollars ($75) nor more than two hundred dollars ($200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars ($200) and imprisonment in the county jail not to exceed ninety (90) days.* Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund."

Section 4. This act is effective January 1, 1976.

Approved April 29, 1975.

CHAPTER NO. 507

AN ACT TO REVISE THE PROPERTY TAX LAWS AFFECTING LIVESTOCK, AMENDING SECTIONS 84-406, 84-202, AND 84-5208, R.C.M. 1947, AND REPEALING SECTIONS 84-5202 THROUGH 84-5207, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. This act may be cited as the "Livestock Tax Reform Act of 1975".

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Section 2. Section 84-406, R.C.M. 1947, is amended to read as follows:

"**84-406. Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles.** (1) The department of revenue or its agent must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. It must also ascertain and assess all mobile homes arriving in each county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock which *are required* by subdivision (3) of this section *to* be assessed on an average inventory basis *in each county*. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles and campers which are required by subdivision 4 hereof to be assessed as of the first day of January.

(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes

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thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock *in each county* on *the assessment date shall* be computed by adding the *assessed* value of *all* livestock more than *nine (9)* months of age *owned by the taxpayer in each county* on the last day of each month since the last assessment date and dividing the sum by twelve (12). *For purposes of this subdivision "livestock" means cattle, sheep, horses, and mules.*

(4) The department of revenue or its agent must ascertain and assess all snowmobiles and campers in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile or campers was at 12 M of the first day of January in each year; provided, however, that snowmobiles and campers which constitute inventory of snowmobile dealers and camper dealers shall be assessed to the dealers as of 12 M of the first Monday of March in each year."

Section 3. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

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(2) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(3) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(4) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month."

Section 4. There is a new R.C.M. section numbered 84-5201.1 that reads as follows:

84-5201.1. Duty of owner to assist in assessment. The owner of livestock as defined in section 84-406 (3), or his agent, at the time of assessment shall make and deliver to the state department of revenue or its agent in the county or counties where his livestock were located since the last assessment date a written statement, under oath, showing the different kinds of his livestock within the county or counties belonging to him or under his charge, with their marks and brands and showing the times during that period that his livestock were within the county or counties.

Section 5. Section 84-5208, R.C.M. 1947, is amended to read as follows:

"**84-5208. Penalty for violation of law.** Any person or persons, company, or corporation, who is the owner or has in charge any livestock within this state, who refuses to make the statement or statements as provided in section *84-5202.1*, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars."

Section 6. Sections 84-5202 through 84-5207 are repealed.

Approved April 29, 1975.

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CHAPTER NO. 508

AN ACT TO AMEND SECTION 27-614, R.C.M. 1947, BY PROVIDING A TWENTY DOLLAR ($20) LICENSE FEE FOR FOOD ESTABLISHMENTS AND PARTICIPATION IN THE FEE BY LOCAL BOARDS OF HEALTH; AMENDING SECTION 27-615, R.C.M. 1947, BY PROVIDING THE PROCEDURE FOR CANCELLATION OR DENIAL OF A FOOD ESTABLISHMENT LICENSE; PROVIDING FOR INJUNCTION; REPEALING SECTIONS 27-616 AND 27-617, R.C.M. 1947; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-614, R.C.M. 1947, is amended to read as follows:

"**27-614. Application for license — fee.** (1) An application for a license is made to the department on forms, and contains information, required by the department.

(2) For each license issued, the department shall collect a fee of *twenty* dollars *($20)*. It shall deposit receipts in the state general fund.

(3) Before June 30 of each year, the department shall pay to a local board of health as established under section 69-4504, 69-4506, or 69-4507, R.C.M. 1947, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local board of health, and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(4) Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter. The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under section 69-4508, R.C.M. 1947."

Section 2. Section 27-615, R.C.M. 1947, is amended to read as follows:

"**27-615. Cancellation or denial of license — procedure.** *(1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.*

(2) A license may not be denied or cancelled by the department without delivery to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or cancelled. In such case, the licensee must

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make a written request to the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When a multiple type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. (A multiple type establishment includes an establishment authorized by section 27-613(2).)

(4) On cancellation of a license or the right to operate one or more of the multiple type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

(5) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter, or a rule effective under this chapter."

Section 3. There is a new R.C.M. section numbered 27-615.2 that reads as follows:

27-615.2. Injunctions. Notwithstanding any other provision of this act the department, local, county, or district health officer or sanitarian may bring an action for an injunction against the continuation of an alleged violation of this act.

Section 4. Sections 27-616 and 27-617, R.C.M. 1947, are repealed.

Section 5. This act is effective January 1, 1976.

Approved April 29, 1975.

CHAPTER NO. 509

AN ACT TO RECODIFY AND REVISE THE PRESENT CODE GOVERNING FORMULATION OF COMPREHENSIVE HEALTH CENTERS; REPEALING SECTIONS 80-2401.1, 80-2403, 80-2405, 80-2406, 80-2407, 80-2407.1, 80-2408, 80-2409, 80-2410, AND 80-2411, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 80-2801 that reads as follows:

80-2801. Definitions. As used in this act:

(1) "Public mental health facility" means any public service or group of services offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) "Community comprehensive mental health center" means a facility, not necessarily encompassed within one (1) building, offering at least the following six (6) basic mental health services to the public:

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(a) twenty-four (24) hour inpatient care;

(b) part-time hospitalization;

(c) outpatient service;

(d) emergency service;

(e) consultation and education in mental health;

(f) precare and aftercare.

(3) "Mental health clinic" means an outpatient facility offering mental health care to the public.

(4) "Department" means the department of institutions.

Section 2. There is a new R.C.M. section numbered 80-2802 that reads as follows:

80-2802. Duties of department. The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate preventive mental health activities of the statewide mental health programs, including, but not limited to, the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community centered services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this act;

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

(4) collect and disseminate information relating to mental health;

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include, but not be limited to, community comprehensive mental health centers, mental health clinics, traveling service units, consultative and educational services;

(6) provide by regulations for the examination of persons, who apply for examination or who are admitted either as inpatients or outpatients into Warm Springs state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions, for the development of mental health services within the state;

(8) establish standards for public mental health facilities;

(9) evaluate performance of public mental health facilities in compliance with federal and state standards.

Section 3. There is a new R.C.M. section numbered 80-2803 that reads as follows:

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80-2803. Departmental contracts with mental health corporations. (1) The department may enter into contracts with regional mental health corporations for the purposes of the prevention, diagnosis, and treatment of mental illness. Mental health corporations may be provided for directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules adopted by the department.

(2) State funds specifically appropriated for regional mental health service contracts shall not exceed fifty percent (50%) of the budget approved by the department of institutions. Furthermore, the department may establish a system whereby funds appropriated to the Warm Springs state hospital for patient care may be transferred to the community mental health services used to implement this act. If the patient load at Warm Springs state hospital is reduced and these patients become patients of a community mental health service, a portion of the funds appropriated for Warm Springs state hospital may be used to supplement the regional budget. However, if those patients are returned to Warm Springs state hospital from the community mental health services, these funds may revert back to the Warm Springs state hospital. The department shall establish rules to implement this provision.

Section 4. There is a new R.C.M. section numbered 80-2804 that reads as follows:

80-2804. Mental health corporations. (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under the Federal Community Mental Health Centers Act.

(2) The mental health regions shall establish themselves under Title 15, chapter 23, R.C.M. 1947. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations shall not be considered agencies of the department or the state of Montana, however, they may retain and enter into retirement programs as established under Title 68, the Public Employees Retirement Act. Upon the establishment of the mental health regions, the county commissioners in each of the various counties in the region shall designate a person from their respective county to serve as a representative of the county on the regional mental health corporation board. The board shall be established under guidelines adopted by the bylaws of the corporation. All appointments to the board shall be for terms of two (2) years, and the department shall be notified in writing of all appointments.

(3) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the

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counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health service within the limits of this section;

(d) receipt and administration of moneys and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this act shall be used to carry out the purposes of this act.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties, when assigned by the board.

(5) The board of mental health shall submit, prior to June 10 of each year, to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional boards budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with section 80-2804 (3)(d).

Section 5. There is a new R.C.M. section numbered 80-2805 that reads as follows:

80-2805. Continuation of services. Nothing in this act shall be construed to prevent the continuation of existing mental health services or facilities.

Section 6. There is a new R.C.M. section numbered 80-2806 that reads as follows:

80-2806. Availability of services. The services of the department and of the incorporated regional mental health centers are available without

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discrimination on the basis of race, color, creed, or ability to pay, and shall comply with Title VI of the Civil Rights Act of 1964.

Section 7. **Repealer.** Sections 80-2401.1, 80-2403, 80-2405, 80-2406, 80-2407, 80-2407.1, 80-2408, 80-2409, 80-2410, and 80-2411, R.C.M. 1947, are repealed.

Approved April 29, 1975.

CHAPTER NO. 510

AN ACT GRANTING THE LEGISLATIVE FINANCE COMMITTEE REVIEW AND APPROVAL POWER OVER BUDGET AMENDMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 43-1117 that reads as follows:

43-1117. Definitions. In this act:

(1) The definitions contained in the Legislative Finance Act shall apply.

(2) "Budget amendment" means a request submitted through the budget director to the committee for executive branch agencies to expend funds in excess of those appropriated by the legislature.

Section 2. There is a new R.C.M. section numbered 43-1118 that reads as follows:

43-1118. Approval of budget amendments. All budget amendments for state agencies must be submitted through the budget director to the committee. No state agency shall expend in excess of the appropriation except under authority of a budget amendment approved by the committee. The committee shall approve, with or without modification, or disapprove, each proposed budget amendment of any state agency.

Section 3. There is a new R.C.M. section numbered 43-1119 that reads as follows:

43-1119. Legislative fiscal analyst to review budget amendments. The legislative fiscal analyst shall review proposed budget amendments submitted to the committee from the budget director and make recommendations to the committee concerning proposed budget amendments.

Approved April 29, 1975.

CHAPTER NO. 511

AN ACT AUTHORIZING A COUNTY TO ISSUE REVENUE BONDS

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FOR THE CONSTRUCTION OF A COUNTY HOSPITAL OR NURSING HOME; AUTHORIZING A LEVY ON TAXABLE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 16-1045 that reads as follows:

16-1045. Bonds and other obligations. (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county constructing a hospital or nursing home under section 16-1008A may borrow money and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the facility, including revenues derived from:

(a) fees and payments for hospital or nursing home services,

(b) taxes levied under section 16-1046,

(c) grants or contributions from the federal government, or

(d) any other sources.

(2) The bonds may be issued by resolution or resolutions of the county governing body without an election, and without any limitation of amount except as follows:

(a) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds, and on any then outstanding bonds for which revenues from the same source or sources are pledged, exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(b) the county shall be obligated to take all action necessary and possible to impose, maintain and collect rates, charges, rentals and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

They may be sold at public or private sale and shall bear interest at a rate or rates not exceeding ten percent (10%) a year. Except as otherwise provided herein, any bonds issued pursuant to this act by a county shall be payable as to principal and interest solely from revenues of the county, and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

(3) Bonds issued by a county pursuant to the provisions of this act are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of section 84-4905 (2)(a). The bonds may be for a forty (40) year period.

For the security of any such bonds, the county may by resolution make

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and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into or exercised by a county. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this act, prior to the payment of current costs of operation and maintenance of the facilities.

(4) The governing body of any county having a population in excess of ten thousand (10,000) may, with respect to bonds issued pursuant to this act by the county, by resolution covenant that, in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of such deficiency and may further covenant that at any time a deficiency is likely to occur within one (1) year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the county for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other county taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one county having a population in excess of ten thousand (10,000) is included in an authority issuing bonds pursuant to this act, the counties may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the counties shall determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution is effective until the question of its approval has been submitted to the qualified electors of the county at a special election called for that purpose by the governing body of the county and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by sections 16-2024 and 16-2026. If a majority of the electors voting thereon vote against approval of the resolution, the county shall have no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such county may nevertheless issue bonds under this act payable solely from the sources referred to in subsection (1) of this section.

Section 2. There is a new R.C.M. section numbered 16-1046 that reads as follows:

16-1046. Tax levy authorized. In the event the bonds become delinquent or cannot be paid from ordinary revenues of the facility, a county which has issued bonds under section 16-1045 may levy taxes on all taxable property within the county in the manner provided for public hospital districts under sections 16-4309 and 16-4309.1, namely: three (3) mills not submitted to a vote of the people and three (3) additional mills approved by a vote of the people.

Section 3. There is a new R.C.M. section numbered 16-1047 that reads as follows:

16-1047. Limitation. The authority granted under this act is available only to counties in which no hospital exists or in which the only existing

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hospital has been ordered closed or cannot be reasonably brought into compliance with the standards established by the department of health and environmental sciences under chapter 52, Title 69, R.C.M. 1947, and which commence construction of a hospital prior to July 1, 1977.

Section 4. This act is effective upon passage and approval.

Approved April 29, 1975.

CHAPTER NO. 512

AN ACT TO BE KNOWN AS THE "UNIFORM PARENTAGE ACT" RELATING TO MATTERS CONCERNING THE PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M. 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1 THROUGH 93-2901-11, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 61-301 that reads as follows:

61-301. Short title. This act may be cited as the "Uniform Parentage Act".

Section 2. There is a new R.C.M. section numbered 61-302 that reads as follows:

61-302. Parent and child relationship defined. As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Section 3. There is a new R.C.M. section numbered 61-303 that reads as follows:

61-303. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Section 4. There is a new R.C.M. section numbered 61-304 that reads as follows:

61-304. How parent and child relationship established. The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this act;

(2) the natural father may be established under this act;

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(3) an adoptive parent may be established by proof of adoption.

Section 5. There is a new R.C.M. section numbered 61-305 that reads as follows:

61-305. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides, or

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

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(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

Section 6. There is a new R.C.M. section numbered 61-306 that reads as follows:

61-306. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

Section 7. There is a new R.C.M. section numbered 61-307 that reads as follows:

61-307. Determination of father and child relationship — who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to section 61-305.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 61-305 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 61-314(2), between an alleged or presumed father and the mother or child, does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

Section 8. There is a new R.C.M. section numbered 61-308 that reads as follows:

61-308. Statute of limitations. (1) Limitation when father and child relationship is presumed.

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(a) An action may be commenced at any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (a), (b), or (c) of section 61-305(1); or

(b) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (a), (b), or (c) of section 61-305(1) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five (5) years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Limitations when father-child relationship is not presumed. An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under section 61-305 may not be brought later than three (3) years after the birth of the child, or later than three (3) years after the effective date of this act, whichever is later. Sections 61-307 and 61-308 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

(3) After the conclusion of an adoption proceeding under chapter 2, Title 61, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced except as provided for in section 61-325 for fraud, and section 61-206, R.C.M. 1947.

Section 9. There is a new R.C.M. section numbered 61-309 that reads as follows:

61-309. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this act. The action may be joined with an action for divorce, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this act personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, including Rule 4B of the Montana Rules of Civil Procedure, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

Section 10. There is a new R.C.M. section numbered 61-310 that reads as follows:

61-310. Parties. The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of social and rehabilitation services or the appropriate county

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welfare department as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 61-305, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

Section 11. There is a new R.C.M. section numbered 61-311 that reads as follows:

61-311. Pre-trial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

Section 12. There is a new R.C.M. section numbered 61-312 that reads as follows:

61-312. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases, the court shall determine the number and qualifications of the experts.

Section 13. There is a new R.C.M. section numbered 61-313 that reads as follows:

61-313. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

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(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

Section 14. There is a new R.C.M. section numbered 61-314 that reads as follows:

61-314. Pre-trial recommendations. (1) On the basis of the information produced at the pre-trial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in section 61-316(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father then the instant action shall be dismissed.

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(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

Section 15. There is a new R.C.M. section numbered 61-315 that reads as follows:

61-315. Civil action. (1) An action under this act is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Section 61-311, subsection (2) and sections 61-312 and 61-313 apply to all action brought under this act.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

Section 16. There is a new R.C.M. section numbered 61-316 that reads as follows:

61-316. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under section 61-324.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

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(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others; and

(i) the value of services contributed by the custodial parent.

Section 17. There is a new R.C.M. section numbered 61-317 that reads as follows:

61-317. Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid out of the treasury of the county in which the action is brought.

Section 18. There is a new R.C.M. section numbered 61-318 that reads as follows:

61-318. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this act or under prior law the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Section 19. There is a new R.C.M. section numbered 61-319 that reads as follows:

61-319. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in section 61-316, subsections (3) and (4) and section 61-318(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under

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section 61-316(4) may specify that the judgment or order may not be modified or revoked.

Section 20. There is a new R.C.M. section numbered 61-320 that reads as follows:

61-320. Rights to counsel — free transcript on appeal. (1) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

Section 21. There is a new R.C.M. section numbered 61-321 that reads as follows:

61-321. Hearings and records — confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Section 22. There is a new R.C.M. section numbered 61-322 that reads as follows:

61-322. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.

Section 23. There is a new R.C.M. section numbered 61-323 that reads as follows:

61-323. Promise to render support. (1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to section 61-307(4).

(2) In the best interest of the child or the mother, the court may, and upon the provision's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Section 24. There is a new R.C.M. section numbered 61-324 that reads as follows:

61-324. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

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(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Section 25. There is a new R.C.M. section numbered 61-325 that reads as follows:

61-325. Custodial proceedings. (1) If a mother relinquishes or proposes to relinquish for adoption a child who has:

(a) a presumed father under section 61-305(1),

(b) a father whose relationship to the child has been determined by a court, or

(c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under sections 61-205 and 61-206, R.C.M. 1947, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(2) If a mother relinquishes or proposes to relinquish for adoption a child who does not have:

(a) a presumed father under section 61-305(1),

(b) a father whose relationship to the child has been determined by a court, or

(c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court.

(3) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child. Notwithstanding this section or any other provision of law and in consideration of her right to privacy, no mother of a child subject to proceedings under this act may be compelled

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to testify to, or divulge the identify of, the father or possible father of that child.

(4) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (6) of this section. If any of them fails to appear, or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(5) If, after the inquiry, the court is unable to identify the natural father or any possible natural father, and no person has appeared claiming to be the natural father and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal, upon the expiration of six (6) months after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(6) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.

Section 26. Section 61-105, R.C.M. 1947, is amended to read as follows:

"**61-105. Custody of legitimate child.** The father and mother of *an* unmarried minor child are equally entitled to its custody, services, and earnings. If either parent be dead, or unable, or refuse to take the custody, or has abandoned his or her family, the other is entitled to its custody, services, and earnings."

Section 27. Section 61-205, R.C.M. 1947, is amended to read as follows:

"**61-205. Persons required to consent to the adoption.** An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(1) Both parents, if living, or the surviving parent, of a child; provided, that consent shall not be required from a father or mother,

(a) adjudged guilty by a court of competent jurisdiction of physical cruelty toward said child; or,

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(b) adjudged to be an habitual drunkard; or,

(c) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,

(d) who has, in the state of Montana, or in any other state of the United States, willfully abandoned such child; or,

(e) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency, or the state department of social and rehabilitation services of the state of Montana for a period of one (1) year without contributing to the support of said child during said period, if able; or,

(f) if it is proven to the satisfaction of the court that said father or mother, if able, has not contributed to the support of said child during a period of one (1) year before the filing of a petition for adoption; or (an adoption of a child may be decreed when there have been filed written consents to adoption executed by).

(2) The legal guardian of the person of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,

(3) The executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated, or if both parents are dead, and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or,

(4) Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of social and rehabilitation services or of an agency, or witnessed by a representative of the court."

Section 28. There is a new R.C.M. section numbered 61-326 that reads as follows:

61-326. Custody determination. Following a determination of the existence of a parent-child relationship and upon petition by either party the court shall thereupon determine the custody of said child or children.

Section 29. There is a new R.C.M. section numbered 61-327 that reads as follows:

61-327. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

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Section 30. **Severability.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 31. **Repeal.** Sections 93-2901-1 through 93-2901-11, 61-103, and 61-108, R.C.M. 1947, are repealed.

Approved April 29, 1975.

CHAPTER NO. 513

AN ACT TO FURTHER IMPLEMENT ARTICLE XI, SECTIONS 3, 5, 6, AND 9 OF THE 1972 MONTANA CONSTITUTION BY PROVIDING PROCEDURES BY WHICH LOCAL GOVERNMENT STUDY COMMISSIONS MAY FORMULATE RECOMMENDATIONS AND SUBMIT RECOMMENDATIONS TO THE VOTERS; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE; PROVIDING A TERMINATION DATE; AND AMENDING SECTIONS 16-5102, 16-5105, AND 16-5113, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-5102, R.C.M. 1947, is amended to read as follows:

"**16-5102. Definitions.** As used in this act:

(1) "Study commission" means a local government study commission established pursuant to this act.

(2) "Unit of local government" means a county, incorporated city or incorporated town.

(3) "Study commissioners" means the elected or appointed members of the local government study commissions.

(4) "Structure" means the entire governmental organization through which a local government unit carries out its duties, functions and responsibilities.

(5) "Form" means a specific and formal governmental organization authorized as an *alternative* form of government by *Title 47A, Part 3, chapter 2.*

(6) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

(7) "Merger" means the joinder of the corporate existence and government of two or more cities and/or towns.

(8) "Consolidation" means a form of local government that provides for

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the joinder of the corporate existence and government of a county and one or more of the cities and/or towns which are located within the county.

(9) "Confederation" means a form of local government that provides for the distribution of the governmental authority between a county and one or more of the cities and/or towns which are located within the county.

(10) "County consolidation" means a form of local government that provides for the joinder of the corporate existence and government of two or more counties.

(11) "Plan of government" means a certificate prepared by a study commission from the provisions of Title 47A, Part 3, chapter 2, that documents the basic form of government selected by the study commission including all applicable suboptions. The plan must establish the terms of all offices and the number of commissioners, if any, to be elected.

(12) "Apportionment plan" means a certificate prepared by a study commission that contains the proposed commissioner districts for a new plan of government.

(13) "Consolidation plan" means a certificate prepared by a study commission that contains the plans for consolidation of existing units of local government.

(14) "Plan for consolidation or transfer of services" means a certificate prepared by cooperating study commissions that contains the plans for consolidation or transfer of services or functions between or among cities, towns, and counties.

(15) "Local government code" means a revision and reorganization of the body of law dealing with the organization and operation of local government to be presented to the 1975 and 1977 legislatures."

Section 2. Section 16-5105, R.C.M. 1947, is amended to read as follows:

"16-5105. Power of the study commission. The study commission shall have the power to review the structure and power of each unit of local government represented on the study commission and shall submit one (1) alternative form of government to the qualified electors of each unit of government or combination of units of government. The study commission may submit an optional or alternative form of government provided by law or may draft a self-government charter."

Section 3. Section 16-5113, R.C.M. 1947, is amended to read as follows:

"16-5113. Finances. (1) The governing body of each local government unit shall prepare a budget to cover the expenses of the study commission for the period it is in operation during fiscal year 1975.

(2) The study commission shall prepare a budget for fiscal year 1976 and a budget for fiscal year 1977 and submit them to the local government unit's governing body for approval.

(3) Each local government unit shall accept and transfer to its study

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commission all funds appropriated from the state general fund for the support of the study commission.

(4) Each local government unit shall supplement the state funds available in fiscal years 1975, 1976, and 1977 by appropriating funds, providing in-kind services, or a combination of both, in a total amount not less than the available state money for each fiscal year. *Each unit of local government may finance the operation of local study commissions, printing and distribution of the tentative and final report, and the election on the alternative form of local government from the general fund or* each local government unit may assess and levy, in addition to all other levies permitted by law, a special tax on each dollar of taxable valuation of the taxable property of the unit of local government. This tax may be levied in each of the fiscal years 1975, 1976, and 1977 and may be levied by a municipality in addition to the all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4, and 84-4701.5, R.C.M. 1947.

(5) All moneys received by the study commission shall be deposited with the county or municipal treasurer. The treasurer is authorized to disburse budgeted funds of the study commission on its order. Unexpended funds of the study commission shall not revert to the general fund of the local government unit at the end of the fiscal year but shall carry over to the study commission's budget for the following fiscal year. *Unexpended funds shall be used to finance the printing and distribution of the final report. Additional funds as required to finance the printing and distribution of the final report shall be appropriated to the study commission by the board of county commissioners for county study commissions and by the city or town council for city and town study commission.* Upon termination of the study commission, unexpended funds shall revert to the general fund of the local government unit *and to the state general fund in proportion to their respective contributions to the study commission.*"

Section 4. There is a new R.C.M. section numbered 16-5115.1 that reads as follows:

16-5115.1. Existing forms of local government. (1) For the purpose of determining the statutory basis of existing units of local government under this act, each unit of local government organized under the general statutes authorizing the municipal mayor-council form of government which does not adopt a new form shall be governed after May 2, 1977 by the following sections of section 47A-3-203:

(1)
(2)
(3)(a)(ii)
(3)(b)(iii)
(3)(c)(ii)
(3)(d)(ii)
(3)(e)(ii)
(3)(f)(i)
(3)(g)(ii)
(3)(h)(i)
(3)(i)(i)
(3)(j)(iii)

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(3)(k)(ii)
(3)(l)(ii)
(4)(a)

This form has terms of four (4) years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed twenty (20) members.

(2) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977 when the new local government code will become effective, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections of section 47A-3-204:
(1)
(2)
(3)
(4)
(5)
(6)(a)(iii)
(6)(b)(i)
(6)(c)(ii)
(6)(d)(ii)
(6)(e)(ii)
(6)(f)(ii)
(6)(g)
(7)(a)

This form has terms of four (4) years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five (5) members.

(3) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977 when the new local government code will become effective, each unit of local government organized under the general statutes authorizing the elected county official form of government shall be governed by the following sections of section 47A-3-205:
(1)
(2)(a)(iii)
(2)(b)(i)
(2)(c)(i)
(2)(d)(ii)
(2)(e)(ii)
(2)(f)(ii)
(2)(g)
(3)(a)(i)
(3)(b)(i)
(3)(c)(i)
(3)(d)(i)
(3)(e)(i)
(3)(f)(i)
(3)(g)(i)

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(3)(h)(i)
(3)(i)(i)
(3)(j)(i)
(3)(k)(i) if the county has elected an auditor.
(3)(k)(vi) if the county has not elected an auditor.
(4)

This form has terms of four (4) years for all elected officials except commissioners who are elected to six (6) year terms. The commission consists of three (3) members.

(4) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977 when the local government code will become effective, each unit of local government organized under the general statutes authorizing the county manager form of government shall be governed by the following sections of section 47A-3-204:
(1)
(2)
(3)
(4)
(5)
(6)(a)(ii)
(6)(b)(i) or (ii)
(6)(c)(ii)
(6)(d)(i)
(6)(e)(ii)
(6)(f)(ii)
(6)(g)

Commissioners are elected to six (6) year terms. The size of the commission shall be established by ordinance, but it may not exceed five (5) members.

Section 5. There is a new R.C.M. section numbered 16-5115.2 that reads as follows:

16-5115.2. Alternative forms of government. A study commission shall submit to the qualified electors an alternative form of local government authorized by Title 47A, Part 3, chapter 2.

Section 6. There is a new R.C.M. section numbered 16-5115.3 that reads as follows:

16-5115.3. Consolidation. (1) A county and a city or town within the county may unite to form a single unit of local government under the provisions of this section.

(2) An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by those study commissions that have cooperated under section 16-5106. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated

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unit of local government. The affected study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated unit of local government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the cooperative study and unless its study commission, by a majority vote, approves the proposed alternative plan for the consolidated government.

(4) Study commissions proposing consolidation shall prepare, adopt, and submit to the voters a consolidation plan, in addition to the alternative form of government. If the commission proposes a charter, the plan may be included in the charter.

The consolidation plan shall:

(a) Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

(b) Provide for establishment of service areas.

(c) Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form.

(d) Provide the official name of the consolidated unit of local government.

(e) Provide for the transfer, reorganization, abolition, absorption, adjustment of boundaries and may provide a method for adjusting the boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish, or absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements. This section shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

(f) Include other provisions which the study commission elects to include and which are consistent with state law.

(5) On its effective date, the alternative form of government and consolidation plan operate to dissolve all local governments within the area of consolidation in accordance with their provisions. On the effective date the separate corporate existence of the county and of each participating city and/or town shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as provided in this chapter, and the consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns so consolidated and merged. As a political subdivision of the state,

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such consolidated unit of local government shall have the status of a county and an incorporated municipality for all purposes and shall replace and be the successor of the county and any city or town.

(6) A consolidated local government shall have and may exercise all powers that are now, or hereafter may be, conferred on counties, cities, or towns by the constitution and laws of the state. The consolidated local government may levy all taxes which counties, cities, and towns are authorized to levy.

(7) Within two years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution, in force at the time of consolidation, shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, may not be repealed.

(8) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to a consolidated local government.

Section 7. There is a new R.C.M. section numbered 16-5115.4 that reads as follows:

16-5115.4. Confederation. (1) A county and any city or town within the county may unite to form a confederated unit of local government under the provisions of this section.

(2) A confederated form of local government may be created only by charter. A charter for a confederated form of local government may be submitted to the voters only by those study commissions that have cooperated under section 16-5106. A majority vote by each of the affected study commissions is required for the submission of a charter for a confederated form of government. The affected study commissions submitting a charter for a confederated unit of local government shall issue a single joint report and proposal.

(3) A charter for a confederated form of government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the cooperative study and unless its study commission, by a majority vote, approves the proposed alternative plan for the confederated government.

(4) In addition to all other requirements, a charter for a confederated form of government shall:

(a) Provide for a confederated system of county, city, and town governments.

(b) Authorize the comprehensive and simultaneous transfer of services to a system in which the county provides county-wide and area-wide services and cities and towns provide local services.

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(c) Permit future transfer of responsibility for provision of services.

(d) Establish a separate legislative body and chief administrative office for the county and each participating city or town in the confederated unit of local government or the plan may provide a single executive for the confederated unit of government. The plan may also provide for a joint legislative body.

(e) Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

(f) Provide for establishment of service areas.

(g) Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments confederated under the charter.

(h) Provide the official name of the confederated unit of local government.

(i) Provide for the transfer, reorganization, abolition, absorption, or adjustment of boundaries, and may provide a method for adjusting the boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the confederated governments. Or the plan may provide for adjusting the boundaries of and may provide a method for adjusting the boundaries of the participating incorporated municipalities. Or the plan may grant the legislative bodies of the confederated government the authority to transfer, reorganize, adjust the boundaries of, absorb, or abolish, and provide a method for adjusting the boundaries of such entities with or without referendum requirements. This section shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

(j) Include other provisions which the study commission elects to include and which are consistent with state law.

(5) On the effective date of the charter there shall be created a confederated unit of local government under the name established in the charter.

(6) On the effective date of the charter, the charter of the confederated form of local government operates to consolidate and merge the corporate existence of the participating units to the extent provided by the charter.

(7) As provided in the charter, the property, assets, obligations, and liabilities of the confederated county, cities, or towns shall be assumed on the effective date of the charter by the parts of the new confederated unit of local government.

(8) As a political subdivision of the state, such confederated local government shall have the status of a county and an incorporated municipality for all purposes and shall replace and be the successor of the county and any city or town.

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(9) A confederated local government shall have and may exercise all powers that are now, or hereafter may be, conferred on counties, cities, or towns by the constitution and laws of the state. The confederated local government may levy all taxes which counties, cities, and towns are authorized to levy.

(10) Within two (2) years after ratification of the confederation, the governing bodies of the confederated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of confederation. Each rule, regulation, ordinance, or resolution, in force at the time of confederation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

(11) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to a confederated local government.

Section 8. There is a new R.C.M. section numbered 16-5115.5 that reads as follows:

16-5115.5. County consolidation. (1) Two or more contiguous counties may unite to form a single unit of local government under the provisions of this section.

(2) An alternative form of government, including a charter form, for consolidated counties may be submitted to the voters only by county study commissions that have cooperated under section 16-5106. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated county unit of local government. The affected county study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) Study commissions proposing county-county consolidation shall prepare, adopt, and submit to the voters a consolidation plan, in addition to the alternative form of government. If the study commissions propose a charter, the plan may be included in the charter.

The consolidation plan shall:

(a) Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

(b) Provide for establishment of service areas.

(c) Provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form.

(d) Provide the official name of the consolidated unit of local government.

(e) Provide for the transfer, reorganization, abolition, absorption,

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adjustment of boundaries and may provide a method for adjusting the boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish or absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements. This section shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

(f) Include other provisions which the study commissions elect to include and which are consistent with state law.

(4) On their effective date, the alternative form of government and consolidation plan operate to dissolve the county governments within the area of consolidation in accordance with their provisions. On the effective date the separate corporate existence of the affected counties shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as provided in this section, and such consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the counties so consolidated. As a political subdivision of the state, such consolidated unit of local government shall have the status of a county, and shall replace and be the successor of the affected counties.

(5) A county-county consolidated local government shall have and may exercise all powers that are now, or hereafter may be, conferred on counties, by the constitution and laws of the state. The consolidated local government may levy all taxes which counties are authorized to levy.

(6) Within two years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating counties at the time of consolidation. Each rule, ordinance, or resolution, in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, may not be repealed.

(7) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties shall remain in full force with respect to a consolidated local government.

Section 9. There is a new R.C.M. section numbered 16-5115.6 that reads as follows:

16-5115.6. County consolidation including municipalities. (1) Two or more contiguous counties and any city or town of the counties may unite to form a single unit of local government under the provisions of this section.

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(2) An alternative form of government, including a charter form, for consolidated counties may be submitted to the voters only by county study commissions that have cooperated under section 16-5106. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated county unit of local government. The affected county study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated county unit of local government may not include any city or town unless the local study commission of that city or town participates in the cooperative study and unless its study commission, by a majority vote, approves the proposed alternative plan for the consolidated government.

(4) Study commissions proposing county-county consolidation that includes a city or town shall prepare, adopt, and submit to the voters a consolidation plan, in addition to the alternative form of government. If the study commissions propose a charter, the plan may be included in the charter.

The consolidation plan shall:

(a) Provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service.

(b) Provide for establishment of service areas.

(c) Provide for the transfer or other disposition of property and other rights, claims, assets and franchises of local governments consolidated under the alternative form.

(d) Provide the official name of the consolidated unit of local government.

(e) Provide for the transfer, reorganization, abolition, absorption, adjustment of boundaries and may provide a method for adjusting the boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments. Or the plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish or absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements. This section shall not apply to municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

(f) Include other provisions which the study commissions elect to include and which are consistent with state law.

(5) On their effective date, the alternative form of government and consolidation plan operate to dissolve all local governments within the area of consolidation in accordance with their provisions. On the effective date the separate corporate existence of the affected counties and a participating city or town shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as

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provided in this section, and such consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as herein otherwise provided, become responsible for all of the obligations and liabilities of the counties and cities and towns if any, so consolidated and merged. As a political subdivision of the state, such consolidated unit of local government shall have the status of a county and an incorporated municipality, if any city or town is included, for all purposes and shall replace and be the successor of the affected counties and of the affected cities and towns, if any.

(6) A county-county consolidation that includes a city or town shall have and may exercise all powers that are now, or hereafter may be, conferred on counties or cities and towns by the constitution and laws of the state. The consolidated local government may levy all taxes which counties or cities and towns are authorized to levy.

(7) Within two years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating counties and cities and towns at the time of consolidation. Each rule, ordinance, or resolution, in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, may not be repealed.

(8) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to a consolidated local government.

Section 10. There is a new R.C.M. section numbered 16-5115.7 that reads as follows:

16-5115.7. Service consolidation or transfer. (1) Cooperating study commissions may submit in addition to any plan of government submitted to the qualified electors, separate ballot questions on the consolidation or transfer of services and functions between or among cities, towns, and counties.

(2) The cooperating study commissions shall prepare a "joint report on services to be consolidated or transferred". The report shall include a certificate containing a "plan for [insert consolidation or transfer] of [insert name of service or function] services" signed by a majority of the members elected or appointed to each commission. The report shall contain a separate plan for each service or function consolidated or transferred.

(3) The plan shall provide:

(a) The nature of service or function transferred or consolidated;

(b) The effective date of such transfer or consolidation;

(c) The manner in which affected employees engaged in the performance of the function will be transferred, reassigned or otherwise treated;

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(d) The manner in which real property, facilities, equipment, or other personal property required in the exercise of the function are to be transferred, sold, or otherwise disposed of;

(e) The method of financing, establishing, and maintaining a budget for the service; and

(f) Other legal, financial, and administrative arrangements necessary to effect the transfer in an orderly and equitable manner.

(4) The plan may include provisions for an administrator or a joint board responsible for administering any joint or cooperative undertaking.

(5) (a) The "joint report on services to be consolidated or transferred" shall be published and distributed to qualified electors and the election conducted as provided in sections 16-5119 and 16-5120.

(b) Each plan for consolidation or transfer of functions shall be listed separately on the ballot. The following form shall be used for each separate plan:

"Shall the plan for [insert consolidation or transfer] of [insert name of service or function] services proposed in the reports of the [insert the names of local government units] local government study commissions be adopted?

☐ Yes.

☐ No."

(c) The affirmative vote of a simple majority of those voting on the question shall be required for adoption of any plan for consolidation or transfer of services.

(d) The plan for consolidation or transfer of service shall take effect as provided in the plan and the legislative body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan for consolidation or transfer of services.

(6) A plan for consolidation and/or transfer of services and functions adopted by the voters may be amended or terminated only by a referendum approved by a majority of electors voting on the question.

Section 11. There is a new R.C.M. section numbered 16-5115.8 that reads as follows:

16-5115.8. Disincorporation. (1) A city or town study commission may submit a proposal for disincorporation to the qualified electors of the city or town. The opportunity of the qualified electors to vote on the proposal for disincorporation shall be construed as an opportunity to vote on an alternative form of government in accordance with Article XI, section 9, of the Montana constitution.

(2) The final report of the study commission shall describe the advantages and disadvantages of disincorporation and shall meet the requirements for a final study commission report established in section 16-5115.9,

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except it shall contain a certificate authorizing disincorporation rather than a proposed "plan of government".

(3) A question of disincorporation proposed by a study commission shall be submitted to the qualified electors in the following form:

"☐For the disincorporation of [insert name of city or town].

☐Against the disincorporation of [insert name of city or town] and for the retention of the present form of government."

(4) Adoption of the study commission proposal for disincorporation shall require the affirmative vote of a majority of the qualified electors voting on the question.

(5) If the disincorporation proposal is approved by the qualified electors the disincorporation shall become effective May 2, 1977.

(6) The legislative body of the county in which the disincorporating city or town is located shall adopt ordinances to provide for orderly disincorporation and may establish tax and service districts to provide services to the disincorporated city or town.

(7) The study commission shall prepare a report containing a recommended plan of disincorporation including suggested ordinances and service districts.

(8) If the study commission proposal for disincorporation is approved by the qualified electors, the disincorporation shall proceed in accordance with the provisions of sections 11-315 through 11-321.

Section 12. There is a new R.C.M. section numbered 16-5115.9 that reads as follows:

16-5115.9. Study commission timetable. Each local study commission, or combination of local study commissions shall:

(1) Conduct one or more public hearings prior to October 1, 1975, for the purpose of gathering information regarding the current form, functions, and problems of the local government or governments.

(2) Formulate, reproduce, and distribute by June 1, 1976, a tentative proposed report. No sooner than thirty (30) days after the report is distributed, conduct one or more public hearings on the tentative report. The tentative report shall contain the same categories of information required to be included in the final report of the commission.

(3) (a) Adopt by August 1, 1976, the final report of the commission. The final report shall contain the following material and documents, each signed by a majority of the members elected or appointed to the commission:

(i) A certificate containing the "plan of government" of the existing form of local government.

(ii) A certificate containing the "plan of government" of the proposed new form of local government, which must differ in some manner from the existing form of local government.

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(iii) A certificate containing the "plan for consolidation", if consolidation is proposed.

(iv) A certificate containing the "plan for apportionment" of commissioner districts if districts are contained in the "plan of government". The apportionment plan shall be based on a census conducted by the study commission or on the most recent federal census and the districts shall be as compact and equal in population as possible.

(v) A certificate establishing the date of the special or general election at which the alternative form of government shall be presented to the qualified electors and a certificate establishing the form of the ballot question or questions.

(b) The report shall contain a comparison of the existing form and proposed form of local government, may contain a statement on the strengths and weaknesses of the existing and proposed form of local government, and may contain information that supports the adoption of the proposed form and information that supports retention of the present form.

(c) The report may contain any minority report signed by members of the commission who do not support the majority proposal.

(4) Prepare or cause to be prepared sufficient copies of its final report, including the full text of the proposed form, any apportionment plan and the commission recommendation. The new report must be available to the qualified electors not later than thirty (30) days prior to the election on the issue of adopting the alternative form. Copies of the final report may be distributed to qualified electors or residents of the local government or governments affected.

(5) Publish for two (2) successive weeks in a newspaper of general circulation throughout the local government unit or units affected, a summary of its proposed plan of government, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government. The expenses of printing, distribution, and publication shall be budgeted by the local government study commission.

(6) File four (4) copies of the final report of the commission with the state commission on local government.

(7) Have the power to prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and potential areas for interlocal agreements. The study commission may submit recommendations to the state commission on local government on revision of state laws governing local governments.

Section 13. There is a new R.C.M. section numbered 16-5115.10 that reads as follows:

16-5115.10. Vote on alternative form. (1) The study commission shall authorize the submission of the alternative form of government to the voters at a special election held in 1976 on or before November 2,

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1976. The special election may be held with the school, primary, general, or other election.

(2) A copy of the final report shall be certified by the study commission to the city, town, or county clerk by August 1, 1976. The clerk shall prepare and print notices of the special election.

(3) Elections on the issue of adoption of a proposed form of government by a local government unit shall be conducted, returned, and canvassed and the result declared in the same manner as provided by law in respect to initiatives and referendums. The cost of the election shall be budgeted by the local government unit. The affirmative vote of a simple majority of those voting on the question shall be required for adoption.

(4) In any election involving the question of consolidation, such question shall be submitted to the qualified voters in the county and shall require an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There shall be no requirement for separate majorities in units of local government voting on consolidation.

(5) In any election involving the question of county-county consolidation or county-county-city consolidation, such question shall be submitted to the qualified electors in the counties affected and shall require a simple majority of the votes cast on the question in each affected county for adoption.

(6) The question of adopting the form of government proposed by the study commission shall be submitted to the qualified electors in substantially the following form:

(a) When only one unit of local government is affected by the proposed form:

"Vote for one:

☐ For adoption of the (self-government charter or form of government) proposed in the report of the (insert name of local government unit) local government study commission.

☐ For the existing form of government."

(b) When more than one unit is affected by the proposed form:

"Vote for one:

☐ For adoption of the (self-government charter or form of government) proposed in the report of the (insert names of local government units) local government study commissions to ("consolidate" or "confederate") the corporate and governmental existence of the following units of local government (insert names of local government units).

☐ For the existing form of government."

(c) The whole number of ballots shall be divided into two (2) equal sets. No more than one (1) set shall be used in printing the ballot for

use in any one (1) precinct and all ballots furnished for use in one precinct shall be identical. The existing form of government shall be printed as the first item and proposed form as second item on half of the ballots and the proposed form as the first item and the existing form as the second item on half of the ballots. If the local government consists of only one (1) precinct, the existing form shall be listed first on the ballot.

(7) A proposed alternative form shall be submitted to the voters as a single question, except suboptions within alternative forms of local government authorized by Title 47A, Part 3, chapter 2, and suboptions authorized in a charter may be submitted to the qualified electors as separate questions. No study commission may submit more than three (3) separate suboptions and no suboption shall contain more than two (2) alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes shall be approved and included in the alternative form of government. The question of adopting a suboption shall be submitted to the qualified electors in substantially the following form:

"Vote for one suboption to be included in the new form of government if it is adopted:

A legal officer (who may be called the "county attorney"):

☐Shall be elected for a term of four years.

☐Shall be appointed for a term of four years by the chairman of the local government commission."

Section 14. There is a new R.C.M. section numbered 16-5115.11 that reads as follows:

16-5115.11. General transition. (1) If the electors disapprove the proposed new form of local government, the local government shall retain its existing form as specified in section 16-5115 and the report of the commission.

(2) (a) A new alternative form of local government and/or consolidation plan approved by the voters, shall take effect on May 2, 1977, except as otherwise provided in this act and any charter or consolidation plan. The electors of any unit of local government which has adopted a new alternative form of local government may not vote on the question of changing the form of local government until three (3) years after the new alternative form of local government became effective, but the voters may vote on amendments to the alternative form or service or functional transfer.

(b) Provisions creating offices and establishing qualifications for office and any apportionment plan shall become effective December 1, 1976 for the purpose of electing officials.

(3) (a) A copy of the existing or proposed "plan of government" ratified by the voters and any "apportionment plan" or "consolidation plan" shall be certified by the chairman of the study commission and filed by

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the study commission by December 1, 1976 with each of the following authorities: secretary of state; attorney general; department of intergovernmental relations; state commission on local government; clerk of the city, town, or county; and clerk of the district court.

(b) The approved plan filed with the secretary of state shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

(4) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law. Consolidated governments are governed by the provisions of section 16-5116.

(5) The adoption of a new form of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

(6) If the proposed new form of local government is adopted the study commission shall prepare an advisory plan for orderly transition to a new form of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, bureaus, departments, and agencies.

(7) The legislative body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfers of powers, records, documents, properties, assets, funds, liabilities, or personnel which are consistent with the approved plan and necessary or convenient to place it into full effect. Where any question arises concerning the transition which is not provided for herein, the legislative body may provide for such transition by ordinance, rule, or resolution not inconsistent with this act.

Section 15. There is a new R.C.M. section numbered 16-5115.12 that reads as follows:

16-5115.12. Transition — officers and employees. (1) The members of the board of county commissioners or the members of the council or commission of a city or town, holding office on the date a new alternative form of government is adopted by the qualified electors of the local government unit, shall continue in office and in the performance of their duties until the commission authorized by the new alternative forms has been elected and qualified, whereupon the prior commission or council shall be abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of such county, city, or town on May 2, 1977, shall continue in the performance of the duties of their respective offices and positions until provision is made for the performance or discontinuance of such duties, or the discontinuance of such offices or positions.

Section 16. There is a new R.C.M. section numbered 16-5115.13 that reads as follows:

16-5115.13. Election of new officials. (1) No primary or general election shall be held in 1976 for the election of county officials. The primary

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and general election for electing city, town, and county officials shall be rescheduled as provided in this section.

(2) The board of county commissioners, city or town council or commission shall order a special local government primary election to be held February 8, 1977 and local government general election on April 5, 1977 for the purpose of electing local government officials.

(3) Primary election is not required in cities and towns with a population of 3,499 or less as shown by the most recent federal census. Nonpartisan candidates shall be nominated by certificates of nomination.

(4) Nomination declarations, or certificates of nomination, shall be filed not later than 5 p.m., January 7, 1977.

(5) If a new alternative form of local government is adopted, all elected city, town, and county officers shall hold their respective offices until the new successors are elected and qualified. The new officials specified in the new alternative form shall be elected at the special primary and general elections authorized in this act although similar offices exist under the former form of government. One (1) less than the number of commissioners specified in the county form shall be nominated and elected.

The county commissioner elected on November 7, 1972 shall continue to hold office as a commissioner until his successor is elected in 1978 and qualified in 1979. Such commissioner retains his office under the provisions of section 6(3) of the transition schedule of the 1972 Montana constitution. If the county is divided into districts, he shall represent the district that contains his legal residence. If the county apportionment plan includes the election of any commissioners at-large, he shall be one of the at-large commissioners.

If the terms of commissioners are to be overlapping, they shall draw lots to establish their respective terms of office at the first meeting of the commission.

(6) If the existing form of local government is retained, all elected city, town, and county officers shall hold their respective offices until the new successors are elected and qualified. Successors shall be elected at the special primary and general election authorized in this act for county officers whose term of office would otherwise terminate on the first Monday of January 1977 or the first Monday of March 1977.

Successors shall be elected at the special primary and general election for city or town officers whose term of office would otherwise terminate on December 31, 1977, or the first Monday of May 1977.

(7) The elections shall be governed by the election laws of the state of Montana. The election shall be conducted, vote returned and canvassed, and results declared in the manner provided by law for election of county officials. Votes cast for city, town, and county officials shall be counted, canvassed, and returned by county election officials. Any separate ballots or election supplies required for election of city or town officials shall be furnished or paid for by the city or town.

(8) Officers elected shall take office on May 2, 1977. They shall serve terms for the duration specified in the alternative form of government.

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Section 17. There is a new R.C.M. section numbered 16-5115.14 that reads as follows:

16-5115.14. Organization of the commission. (1) The first meeting of a new commission for a new form of government shall be held at 10 a.m. on May 2, 1977, at which time newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

Section 18. There is a new R.C.M. section numbered 16-5115.15 that reads as follows:

16-5115.15. Judicial enforcement and review. (1) Ten (10) or more qualified electors or the attorney general may petition the district court to enforce the provisions of this chapter.

(2) The provisions of Title 93, chapter 89, R.C.M. 1947 (Uniform Declaratory Judgments Act) shall apply to the adoption of a charter or an alternative form of government. A petition for declaratory relief under Title 93, chapter 89, may be brought on behalf of the public either by the attorney general or by ten (10) or more qualified electors of the local government unit. In the case of a petition by ten (10) or more qualified electors, the attorney general shall be served notice of the petition and may intervene as a party at any stage of the proceedings. The petitioner may, in the court's discretion, be awarded costs which may include reasonable attorney fees.

(3) Judicial review to determine the validity of the procedures whereby any charter or alternative form of government is adopted may be had by petition of ten (10) or more registered voters of the city or town brought within sixty (60) days after the election at which such charter or form of government, revision, or amendment is approved. The petitioner may, in the court's discretion, be awarded costs which may include reasonable attorney fees. If no petition is filed within that period, compliance with all the procedures required by this act and the validity of the manner in which the charter, or form of government was approved shall be conclusively presumed. It shall be presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or form of government shall not be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption.

Section 19. There is a new R.C.M. section numbered 16-5115.16 that reads as follows:

16-5115.16. Effect of other laws. The procedures established by this chapter for adoption and implementation of an alternative form of government, a charter, a consolidated government, a confederated government, a consolidation or transfer of services, or a disincorporation of a city or town are exclusive and shall not be effected by any other law, except the disincorporation of a city or town shall be governed by other law as provided in this chapter.

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Section 20. **Liberal construction.** This act shall be liberally construed to effectuate its purpose of facilitating the review of local government.

Section 21. **Severability clause.** If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

Section 22. **Immediate effective date.** This act is effective on its passage and approval.

Section 23. **Automatic repealer.** This act terminates on June 30, 1977.

Approved April 29, 1975.

CHAPTER NO. 514

AN ACT AMENDING SECTION 84-1832.1, R.C.M. 1947, TO INCREASE THE TAX LEVIED ON DIESEL FUEL AND LIQUID PETROLEUM GAS AND AMENDING SECTION 84-1847, R.C.M. 1947, TO INCREASE THE TAX LEVIED ON GASOLINE; AND TO AMEND SECTION 84-1840, R.C.M. 1947, TO INCREASE THE ALLOTMENT OF FUNDS DERIVED FROM THE TAX ON DIESEL FUEL AND LIQUID PETROLEUM GAS AND GASOLINE TO LOCAL GOVERNMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1832.1, R.C.M. 1947, is amended to read as follows:

"**84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when.** The state department of revenue shall, under the provisions of rules and regulations issued by the department, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to *nine and three-quarters cents ($.09 ¾)* for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46) A.P.I. (American Petroleum Institute) gravity test, and *seven and three-quarters cents ($.07 ¾)* for each gallon of liquid petroleum gas when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivisions."

Section 2. Section 84-1840, R.C.M. 1947, is amended to read as follows:

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"**84-1840. Disposition of funds.** All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the department of highways except those funds hereinbelow allocated to cities, towns and counties, which funds shall be paid by the state treasurer directly to such cities, towns and counties.

(1) *Six million five hundred thousand dollars ($6,500,000)* of the funds collected under this act shall be allocated each fiscal year to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance and repair of rural roads, and city or town streets and alleys, as provided in subsections (a) and (b) hereof,

(a) *Two million nine hundred fifty thousand dollars ($2,950,000)* shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) *Three million five hundred fifty thousand dollars ($3,550,000)* shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities and towns, shall inform the department

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of highways of the purposes for which the funds shall be expended so that the county commissioners, the governing body and the department of highways may co-ordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction and maintenance or repair is in excess of $4,000.

(5) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment."

Section 3. Section 84-1847, R.C.M. 1947, is amended to read as follows:

"**84-1847. Gasoline license tax — amount.** Every distributor shall pay to the state department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to one cent (1¢) for each gallon of aviation gasoline, which shall be allocated to the aeronautics commission, as provided by section 1-501, R. C.M. 1947, as amended, and *seven and three-quarters cents ($.07 ¾)* for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax."

Approved April 29, 1975.

CHAPTER NO. 515

AN ACT AUTHORIZING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO REIMBURSE A CITY UP TO HALF THE OPERATING DEFICIT OF A PUBLIC TRANSPORTATION SYSTEM, PROVIDING FOR ALLOCATION OF APPROPRIATED MONIES TO THE COUNTIES FOR TRANSPORTATION PURPOSES, DECLARING SUCH EXPENDITURE TO BE FOR HIGHWAY PURPOSES, AND APPROPRIATING $300,000 FROM THE EARMARKED REVENUE FUND HIGHWAY ACCOUNT FOR THE PURPOSES OF THIS ACT.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 11-4513 that reads as follows:

11-4513. Aid for public transportation — allocation formula — highway purposes. (1) The department of intergovernmental relations shall allocate each year one-half (½) of the funds appropriated for the purposes of this section among the cities of the state which operate, or contract for the operation of, public bus or other public transportation system. A city is eligible for an allocation based upon the amount of the operating deficit of the system, as follows: the proportion of the operating deficits of all municipal public transportation systems in the state represented by the operating deficit of the applicant city, multiplied by the rate of system usage based on bus passengers per mile in the applicant city, where full usage of the system would have a value of one (1). Each applicant city shall compute its operating deficit and rate of usage for a fiscal year immediately following the end of such year, and shall apply allocations received against that deficit. One-half (½) of the funds appropriated for the purposes of section 11-4513 shall be paid by the state treasurer to the counties of the state in the manner provided in section 84-1840(1)(a). Monies distributed to counties under section 11-4513 shall be used by the counties for highway or other transportation purposes. The department of intergovernmental relations may make rules for the keeping of accounts for, and otherwise implementing, this section.

(2) A city may not receive more than fifty percent (50%) of any year's operating deficit as an allocation under this section.

Section 2. There is appropriated three hundred thousand dollars ($300,000) from the earmarked revenue fund, highway account, for the biennium ending June 30, 1977, to be allocated for the purposes of section 11-4513.

Approved April 29, 1975.

CHAPTER NO. 516

AN ACT AMENDING SECTIONS 91A-1-401, 91A-3-303, 91A-3-403, 91A-3-706, 91A-3-806, 91A-3-1010, AND 91-4468, R.C.M. 1947, RELATING TO THE MONTANA UNIFORM PROBATE CODE AND REPEALING SECTIONS 91A-6-103, 91A-3-714, 91A-3-715, AND 91-218, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-1-401, R.C.M. 1947, is amended to read as follows:

"**91A-1-401. Notice — method and time of giving.** (1) If notice of a hearing on any petition is required and except for specific notice

requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice shall be given:

(a) by mailing a copy thereof at least fourteen (14) days before the time set for the hearing by certified, registered or ordinary first class mail addressed to the person being notified at the post-office address given in his demand for notice, if any, or at his office or place of residence, if known;

(b) by delivering a copy thereof to the person being notified personally at least fourteen (14) days before the time set for the hearing; or

(c) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing *in a weekly paper* once a week for three (3) consecutive weeks, *and if* in a newspaper *published more often than once a week, by publishing on at least three (3) different days of publication and it shall be so published that there must* be at least ten (10) days *from the first to the last day of publication, both the first and last day being included.*

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding."

Section 2. Section 91A-3-303, R.C.M. 1947, is amended to read as follows:

"**91A-3-303. Informal probate — proof and findings required.** (1) In an informal proceeding for original probate of a will, the clerk shall determine whether:

(a) the application is complete;

(b) the applicant has made oath or affirmation that the statements contained in the application are true to the best of his knowledge and belief;

(c) the applicant appears from the application to be an interested person as defined in section 91A-1-201 (21);

(d) on the basis of the statements in the application, venue is proper;

(e) an original, duly executed and apparently unrevoked will is in the clerk's possession;

(f) any notice required by section 91A-3-204 has been given and that the application is not within section 91A-3-304; and

(g) it appears from the application that the time limit for original probate has not expired.

(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or except as provided in subsection (4) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

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(3) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 91A-2-502, 91A-2-503 or 91A-2-506 have been met shall be probated without further proof. In other cases the clerk *may assume execution if the will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.*

(4) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(5) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (1) above, may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place."

Section 3. Section 91A-3-403, R.C.M. 1947, is amended to read as follows:

"**91A-3-403. Formal testacy proceeding; notice of hearing on petition.** (1) Upon commencement of a formal testacy proceeding, the court *or clerk* shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 91A-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under section 91A-3-204 of this code.

Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(2) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on said petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(a) by inserting in one (1) or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

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(b) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(c) by engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration."

Section 4. Section 91A-3-706, R.C.M. 1947, is amended to read as follows:

"**91A-3-706. Duty of personal representative; supplementary inventory and appraisement; employment of appraiser; copy to department of revenue.** Within three (3) months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death; or had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within three (3) years of his death; or which was affected by his death for the purpose of inheritance or estate taxes. The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representative shall appoint *one (1) or more* qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

The personal representative shall send a copy of the inventory to interested persons who request it, *or* he *may* file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue."

Section 5. There is a new R.C.M. section numbered 91A-3-1012 which reads as follows:

91A-3-1012. Final accounting to close estate. Before an estate may be finally closed and the personal representative relieved of his duties and obligations, he shall either file with the court or deliver to all interested persons an accounting under oath showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants and all other matters necessary to show the state of its affairs. Any interested person at any time during the course of the administration of an estate may for good cause shown require further accountings. If the personal representative is the sole beneficiary of the estate no accounting need be made.

Section 6. There is a new R.C.M. section numbered 91A-3-715.1 that reads as follows:

91A-3-715.1. Estate sales — inventory required — exception. Save upon an order of court obtained after notice and hearing in a supervised

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proceeding or formal probate, no property of the estate may be sold unless an inventory and statement of value has been delivered to the state department of revenue.

Section 7. Section 91A-3-806, R.C.M. 1947, is amended to read as follows:

"**91A-3-806. Allowance of claims.** (1) As to claims presented in the manner described in section 91A-3-804 within the time limit prescribed in 91A-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty (60) days after the time for original presentation of the claim has expired has the effect of a notice of *disallowance.*

(2) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1) of this section. Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(3) A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(4) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty (60) days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision."

Section 8. Section 91A-3-1010, R.C.M. 1947, is amended to read as follows:

"**91A-3-1010. Lien of state on estate property for unpaid inheritance taxes.** All property which is affected by the death of the decedent and on which inheritance, estate or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have been paid. This lien follows all property sold in the course of administration or distributed under this code until such time as all inheritance

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taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to applicable statutes of limitations on state inheritance tax liens. The department of revenue may issue a consent to transfer any real or personal property in the estate of a decedent free of the lien for unpaid inheritance taxes upon proper application and under such rules and regulations as the department shall prescribe.

Section 9. Section 91-4468, R.C.M. 1947, is amended to read as follows:

"**91-4468. Personal representative to furnish information — department to determine tax — appeal.** The personal representative, or should the personal representative fail to do so, any interested person, shall make application to the state department of revenue for determination of any tax due upon the estate of a decedent. The applicant shall furnish to the department of revenue the inventory and appraisement required by section 91A-3-706 of this act and of any supplemental inventory under section 91A-3-707 of this act together with a statement, under oath or affirmation, of any property owned by the decedent at the time of his death situated outside of this state and without its jurisdiction. *The applicant shall, upon request of the department, furnish the department with the final accounting of such personal representative.* If the decedent died testate, the personal representative shall likewise furnish the department with a certified copy of the last will of the decedent. If the decedent died intestate, the personal representative shall provide the department with a sworn statement setting forth the names, ages, and residences of the heirs at law of decedent. In all cases, the personal representative shall set forth the proportion of the entire estate inherited by or devised to each of said persons, and the relation, if any, which each devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. The information so provided shall not be binding upon the department in case it believes the same to be erroneous or untrue. From the information so furnished the department and such other information as it may be able to obtain with reference thereto, the department shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of the inheritance tax laws of the state of Montana, and a copy of such determination shall be mailed to the personal representative and to the clerk of the appropriate district court. If no tax is due, the department shall likewise so inform the clerk of district court and the personal representative. Should the personal representative or any person affected by the determination of inheritance tax feel aggrieved by the department's determination, he may, within sixty (60) days after the filing of the copy of such determination with the clerk of district court, appeal the determination to the appropriate district court, by serving upon the department his objections to such determination and by filing such notice, after so serving the same, in the office of the clerk of such court. The court shall set a day for hearing such appeal upon ten (10) days' notice to all interested parties, and at the time and place set shall hear the appeal, upon all papers and records which may be properly presented before it, and shall as soon as possible thereafter issue its order determining the amount of such inheritance tax, if it finds a tax to be due."

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Section 10. Sections 91A-6-103, 91A-3-714, 91A-3-715, and 91-218, R.C.M. 1947, are repealed.

Approved April 29, 1975.

CHAPTER NO. 517

AN ACT PROVIDING FOR THE SUSPENSION OF ACTION ON CERTAIN APPLICATIONS FOR CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED DURING WHICH TIME A COMPREHENSIVE MONTANA ENERGY POLICY AND PLAN SHALL BE FORMULATED; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 70-825 that reads as follows:

70-825. Statement of legislative findings and policy. The legislature, noting the apparent federal initiative for energy conversion facilities and further noting their complex economic, social and environmental impacts as well as the lack of clearly defined state energy conversion objectives, policies, and plans, finds that energy conversion facility siting must be restrained until such state objectives, policies, and plans are defined, developed, and subjected to citizen participation and review. The legislature further finds that action on individual utility siting applications without a comprehensive program could lead to economic, social, and environmental disruption in their cumulative impact. The legislature pursuant to its mandate and authority under Article IX of the Montana constitution declares that it is the policy of this state that until a comprehensive state energy conversion policy and plan is developed and accepted, the siting of certain energy conversion facilities shall be suspended.

Section 2. There is a new R.C.M. section numbered 70-826 that reads as follows:

70-826. Definitions. Unless the context clearly requires otherwise, in this act:

(1) "Board" means the board of natural resources and conservation.

(2) "Application" means an application for a certificate of environmental compatibility and public need under the Montana Utility Siting Act of 1973 for only a utility facility:

(a) designated for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

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(b) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more, or any addition thereto, having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(c) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or

(d) designed for or capable of enriching uranium minerals.

(3) "Department" means the department of natural resources and conservation.

(4) "Certificate" means certificate of environmental compatibility and public need.

Section 3. There is a new R.C.M. section numbered 70-827 that reads as follows:

70-827. Suspension of action. (1) Once the next board has granted a certificate for a utility facility as described in section 70-826 the department shall not accept or act upon any application until:

(a) the governor of the state of Montana has prepared and submitted directly to the next legislature a long-term, comprehensive state energy conversion policy and plan including but not limited to alternative long-term growth goals, a statewide siting inventory, and a proposed siting policy for the coordinated siting of energy conversion facilities to meet Montana's energy needs,

(b) the next legislature of the state of Montana has had an opportunity to respond to the policy and plan with appropriate legislation.

(2) Provided that this act does not apply to any application accepted by the department prior to passage and approval of this act.

Section 4. There is a new R.C.M. section numbered 70-828 that reads as follows:

70-828. Other application suspensions. The board may suspend action on applications not meeting the definition of application in section 70-826 if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications, if granted, would be contrary to the policies and purposes of this act.

Section 5. There is a new R.C.M. section numbered 70-829 that reads as follows:

70-829. Positive action allowed. The board may take action on applications meeting the definition of application in section 70-826 if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that (1) the facility is required to meet state energy needs, or (2) upon a clear and convincing showing by the applicant the burden imposed on interstate commerce

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outweighs the adverse impacts of the proposed facility on the public health, safety, general welfare and environment of the state of Montana.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1975.

CHAPTER NO. 518

AN ACT RELATING TO THE SCHOOL FOUNDATION PROGRAM; PROVIDING FOR CHANGES IN THE FINANCIAL SCHEDULES FOR THE MAXIMUM GENERAL FUND BUDGETS FOR ELEMENTARY AND HIGH SCHOOL DISTRICTS; AMENDING SECTION 75-6905, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6905, R.C.M. 1947, is amended to read as follows:

"**75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools.** The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for 1975-76

(1) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be *eight thousand six hundred thirteen dollars ($8,613)*, if said school is approved as an isolated school.

(2) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be *eight thousand six hundred thirteen dollars ($8613)* plus *three hundred sixty dollars ($360)* per pupil on the basis of the average number belonging over nine (9).

(3) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be *eleven thousand eight hundred fifty-three dollars ($11,853)* plus *three hundred sixty dollars ($360)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(4) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be *eighteen thousand nine*

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hundred twenty-four dollars ($18,924) plus *two hundred twenty-five dollars and forty cents ($225.40)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(5) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of *eight hundred thirty-six dollars and thirty cents ($836.30)* shall be decreased at the rate of *eighty-one cents ($.81)* for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of *seven hundred eighty-seven dollars and sixty cents ($787.60)* shall be decreased at the rate of *seventy-four cents ($.74)* for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed *six hundred thirty-nine dollars and ten cents ($639.10)* for each pupil.

(6) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

High School Schedule for 1975-76

(7) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be *forty-nine thousand fifty-one dollars ($49.051).*

(8) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum *two thousand forty-four dollars ($2,044)* shall be decreased at the rate of *eleven dollars and fifteen cents ($11.15)* for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of *one thousand eight hundred sixty-five dollars ($1,865.00)* shall be decreased at the rate of *eleven dollars and fifteen cents ($11.15)* for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of *one thousand one hundred ninety-seven dollars ($1,197)* shall be decreased at the rate of *one dollar eighty-six cents ($1.86)* for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of *one thousand ten dollars ($1,010)* shall be decreased by *one dollar and two cents ($1.02)* for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of *nine hundred seven dollars and sixty cents ($907.60)* shall be decreased at the rate of *nineteen cents ($.19)* until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed *eight hundred fifty-one dollars and ten cents ($851.10)* per pupil.

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(9) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

Elementary School Schedule for 1976-77 and Succeeding Years

(10) For each elementary school having an ANB of nine (9) or fewer pupils, the maximum shall be *nine thousand seven hundred seven dollars ($9,707)* if said school is approved as an isolated school.

(11) For schools with an ANB of ten (10) pupils, but less than eighteen (18) pupils, the maximum shall be *nine thousand seven hundred seven dollars ($9,707)* plus *four hundred five dollars and seventy cents ($405.70)* per pupil on the basis of the average number belonging over nine (9).

(12) For schools with an ANB of eighteen (18) pupils and employing one (1) teacher, the maximum shall be *thirteen thousand three hundred fifty-eight dollars ($13,358)* plus *four hundred five dollars and seventy cents ($405.70)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of twenty-five (25).

(13) For schools with an ANB of eighteen (18) pupils and employing two (2) full-time teachers, the maximum shall be *twenty-one thousand three hundred twenty-six dollars ($21,326)* plus *two hundred fifty-four dollars and ten cents ($254.10)* per pupil on the basis of the average number belonging over eighteen (18), not to exceed an ANB of fifty (50).

(14) For schools having an ANB in excess of forty (40) the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than forty (40) and employing a minimum of three (3) teachers, the maximum of *nine hundred forty-two dollars and fifty cents ($942.50)* shall be decreased at the rate of *ninety-two cents ($.92)* for each additional pupil until the total number (ANB) shall have reached a total of one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, the maximum of *eight hundred eighty-seven dollars and fifty cents ($887.50)* shall be decreased at the rate of *eighty-four cents ($.84)* for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum shall not exceed *seven hundred twenty dollars and twenty cents ($720.20)* for each pupil.

(15) The maximum per pupil, for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

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High School Schedule for 1976-77 and Succeeding Years

(16) For each high school having an ANB of twenty-four (24) or fewer pupils, the maximum shall be *fifty-five thousand two hundred ninety-three dollars ($55,293).*

(17) For a secondary school having an ANB of more than twenty-four (24) pupils, the maximum *two thousand three hundred four dollars ($2,304)* shall be decreased at the rate of *twelve dollars fifty-seven cents ($12.57)* for each additional pupil until the ANB shall have reached a total of forty (40) such pupils. For a school having an ANB of more than forty (40) pupils, the maximum of *two thousand one hundred three dollars ($2,103)* shall be decreased at the rate of *twelve dollars and fifty-seven cents ($12.57)* for each additional pupil until the ANB shall have reached one hundred (100) pupils. For a school having an ANB of more than one hundred (100) pupils, a maximum of *one thousand three hundred forty-nine dollars ($1,349)* shall be decreased at the rate of *two dollars and ten cents ($2.10)* for each additional pupil until the ANB shall have reached two hundred (200) pupils. For a school having an ANB of more than two hundred (200) pupils, the maximum of *one thousand one hundred thirty-nine dollars ($1,139)* shall be decreased by *one dollar and fifteen cents ($1.15)* for each additional pupil until the ANB shall have reached three hundred (300) pupils. For a school having an ANB of more than three hundred (300) pupils, the maximum of *one thousand twenty-three dollars ($1,023)* shall be decreased at the rate of *twenty-one cents ($.21)* until the ANB shall have reached six hundred (600) pupils. For a school having an ANB over six hundred (600) pupils, the maximum shall not exceed *nine hundred fifty-nine dollars and forty cents ($959.40)* per pupil.

(18) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one (1) school for the purpose of this schedule.

(19) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by this section, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the seventh (7th) and eighth (8th) grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (a) by the ANB calculated in subsection (b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

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(d) subtract the amount determined in subsection (c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district.

(20) For the purpose of establishing the maximum-budget- without-a-vote amount for current year special education program for a school district, the superintendent of public instruction will determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in section 75-7813.1;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of this act. The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.

(21) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this chapter, then subject to the approval of the program by the superintendent, under the emergency budget provisions of section 75-6723 (5), allowable costs approved under the budgeting provisions of section 75-6905 (20) for the operation of the program during the given year may be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as "previous year special education expenses" in the school district budget for the subsequent school year.

(22) The sum of the previous year special education expenses as defined in subsection (21) above, and the maximum-budget-without-a-vote for current year special education as defined in subsection (20) shall be the special education budget for accounting purposes.

The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in sections 75-6902 and 75-6903 to obtain the total maximum-budget-without-a-vote for the district."

Approved April 29, 1975.

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CHAPTER NO. 519

AN ACT PROVIDING FOR SMALL CLAIMS COURTS IN THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-322 that reads as follows:

93-322. Small claims court authorized. There may be created within the jurisdiction of the district court of any county of the state of Montana a separate court, known as the "Small Claims Court".

Section 2. There is a new R.C.M. section numbered 93-323 that reads as follows:

93-323. Creation of small claims court. A small claims court may be created by a resolution passed by the board of county commissioners after consultation with the district court judges of the judicial district in which such county is located, or by county initiative as provided in Title 37, chapter 3, R.C.M. 1947. Upon such order or passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this act. When the order is filed with the clerk of the district court of the appropriate county the clerk of the district court becomes the clerk of the small claims court.

Section 3. There is a new R.C.M. section numbered 93-324 that reads as follows:

93-324. Duration of small claims court. A small claims court created under this act continues in existence until abolished by the same means by which it was formed under section 93-323. Any small claims court may be abolished by county initiative as provided in section 93-323.

Section 4. There is a new R.C.M. section numbered 93-325 that reads as follows:

93-325. Appointment of judge—salary—qualifications. (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court judges;

(c) be paid a salary set by the district court judge; and

(d) be an attorney licensed to practice law in the state of Montana.

(2) The judge of the district court may appoint more than one (1) small claims court judge for any small claims court and the salary shall be prorated among the judges appointed.

Section 5. There is a new R.C.M. section numbered 93-326 that reads as follows:

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93-326. Location—office hours—duties of judge. The small claims court shall be located in the appropriate district and shall be open as required by the district judge. In the event that more than one (1) small claims court judge has been appointed, the judges so appointed may divide their responsibility hereunder. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

Section 6. There is a new R.C.M. section numbered 93-327 that reads as follows:

93-327. Multi-county small claims courts. Where there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district. In such cases the salary of the small claims court judge shall be prorated among the counties in which he presides. The judge shall be entitled to collect mileage for the distance actually traveled when required to convene small claims court in more than one county, pursuant to section 59-801.

Section 7. There is a new R.C.M. section numbered 93-328 that reads as follows:

93-328. Act to be liberally construed. It is the purpose of this act to provide a speedy remedy in claims falling hereunder, and to promote a forum in which such claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions hereof should be liberally construed to provide an informal, but equitable, means of justice, and the judges appointed hereunder are required to assist all parties before them to obtain substantial justice.

Section 8. There is a new R.C.M. section numbered 93-329 that reads as follows:

93-329. Jurisdiction. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when such action arises out of a contract, express or implied, and the amount of the claim, exclusive of costs, does not exceed one thousand five hundred dollars ($1,500) and the defendant can be served within the county or counties for which the small claims court has been created. More than one (1) claim may be joined, if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed one thousand five hundred dollars ($1,500).

(2) A district court judge may require any action filed in district court to be removed to the small claims court, if the amount in controversy does not exceed one thousand five hundred dollars ($1,500). The small claims court shall hear any action so removed from the district court.

Section 9. There is a new R.C.M. section numbered 93-330 that reads as follows:

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93-330. Parties—representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court except as set forth in subsection (3) herein.

(3) An individual shall represent himself in the small claims court. A partnership shall be represented by a partner or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

Section 10. There is a new R.C.M. section numbered 93-331 that reads as follows:

93-331. Venue. Proper venue for actions commenced in small claims court is the same as that provided by law for civil actions commenced in district court.

Section 11. There is a new R.C.M. section numbered 93-332 that reads as follows:

93-332. Commencement of actions. Actions in small claims court shall be commenced by filing an affidavit with the clerk of court. The clerk of court shall provide forms for the affidavits, which shall be in substantially the following form:

"In the Small Claims Court of the _____ Judicial District in and for the County of _____, State of Montana.

_____, Doc._____ No._____
Plaintiff

vs. PLAINTIFF'S COMPLAINT/ AFFIDAVIT NOTICE TO DEFENDANT, SEEKING MONEY DAMAGES

_____,
Defendant

Plaintiff states that defendant(s) owe and should be ordered to pay to me the sum of _____, because on _____ at _____, the defendant(s)
(place) (date)

_____ _____

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Plaintiff declares that the defendant or defendants are not a "person in military service" or "person in the military service of the United States" as defined in Sec. 101 of the Soldier's and Sailor's Relief Act, 1940.
To the best of my knowledge and belief, the defendant named above resides at the following address, or the following is the business address:

_____ _____

My printed name and printed address are as follows:

_____

Signed in my presence Signature:_____

_____

Clerk or Deputy Today's date:_____

ORDER OF THE COURT/NOTICE TO DEFENDANT

This claim has been filed against you. You must appear before this court on _____ at _____ at _____
(date) (time) (location)
If you do not appear, a judgment may be entered against you. Costs of the action also may be charged against you. You should read the information on the back of this claim and notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person at

_____
(location of court)
or by telephone at _____.
(number)

_____
Clerk of the Court
By:_____

Section 12. There is a new R.C.M. section numbered 93-333 that reads as follows:

93-333. Order of court—contents. (1) Upon filing the affidavit and payment of the fee hereinafter provided, the clerk of court shall cause to be delivered to the sheriff of the county of the defendant's residence a copy of the affidavit together with the original and a copy of an order issued by the court, directed to the defendant, and directing the defendant to pay the claim set forth in the affidavit, or deliver up the property described, or, in the alternative, to appear and answer the claim set forth in the affidavit.

(2) The order shall:

(a) specify the time, date, and place set for hearing the claim;

(b) state that if the defendant fails to appear at the hearing and has not satisfied the claim, judgment will be entered against him in the amount or for the relief claimed, for costs; and

(c) be signed by the clerk of court and bear the seal of the court.

Section 13. There is a new R.C.M. section numbered 93-334 that reads as follows:

93-334. Service on defendant. The original order shall be shown to

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the defendant and a copy of it along with a copy of the affidavit shall be served upon the defendant by the sheriff in the same manner provided by law for service of process in civil actions in district court. The provisions of law relating to sheriff's fees are applicable to this section.

Section 14. There is a new R.C.M. section numbered 93-335 that reads as follows:

93-335. Hearing date—how set. The date for the appearance of the defendant to be set forth in the order shall be determined by the clerk of court in accordance with rules adopted by the small claims judge, and shall not be more than thirty (30) nor less than ten (10) days from the date of the order. Service of the order and copy of the affidavit shall be made upon the defendant not less than seven (7) days prior to the date set for his appearance by the order. If the order is not timely served, plaintiff may have a new appearance date set by the clerk and a new order issued and delivered to the sheriff, and, if necessary, repeated orders may be issued at any time within one year after the commencement of the action.

Section 15. There is a new R.C.M. section numbered 93-336 that reads as follows:

93-336. Return of service. The sheriff, after effecting service, shall make return upon the original order and file it with the clerk of court.

Section 16. There is a new R.C.M. section numbered 93-337 that reads as follows:

93-337. Defendant's counterclaim—answer. (1) If the defendant wishes to assert a counterclaim against the plaintiff he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than seventy-two (72) hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or set-off may not exceed one thousand five hundred dollars ($1,500). If a counterclaim or set-off is asserted in excess of one thousand five hundred dollars ($1,500), the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or set-off only to the question of whether plaintiff's claim is discharged thereby, leaving defendant to prosecute the balance of his claim in appropriate district court action.

Section 17. There is a new R.C.M. section numbered 93-338 that reads as follows:

93-338. Attachment—execution. Attachment or prejudgment garnishment is not available in actions brought in small claims court. Proceedings to enforce or collect a judgment are governed by the laws relating to executions upon district court judgments.

Section 18. There is a new R.C.M. section numbered 93-339 that reads as follows:

93-339. Proceedings informal—court reporters. If the action is

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tried to the court, the proceedings shall be informal to the extent possible in order to dispense speedy justice to the parties. A reporter is not necessary unless the judge finds the issues sufficiently complex that a record is desirable, in which case he shall make arrangements with a court reporter of the district court to take the testimony. The judge shall make findings of fact sufficient to establish in full the basis of his judgment, and shall file them with his judgment. If a jury is empaneled, it shall try all issues of fact, and in such case there shall be a court reporter.

Section 19. There is a new R.C.M. section numbered 93-340 that reads as follows:

93-340. Small claims jury—waiver—request. The plaintiff, by filing the affidavit for a proceeding in small claims court waives the right to jury trial. Defendant may request a jury provided such request is made not less than forty-eight (48) hours prior to the date set for hearing. If defendant pleads a counterclaim or set-off, he, too, waives a jury trial. If a jury is requested, it shall be empaneled in the same fashion as provided for district court juries in civil cases involving less than ten thousand dollars ($10,000).

Section 20. There is a new R.C.M. section numbered 93-341 that reads as follows:

93-341. Evidence—subpoena power. Both parties have the right to offer evidence, written and oral, and the judge may direct the production of evidence as he deems appropriate. The small claims court has the subpoena power granted to district courts in civil cases.

Section 21. There is a new R.C.M. section numbered 93-342 that reads as follows:

93-342. Entry of judgment. Upon the conclusion of a case tried to the court the judge shall make his findings and enter judgment. Judgment shall be entered upon a jury verdict in the same manner as is provided for district court jury trials.

Section 22. There is a new R.C.M. section numbered 93-343 that reads as follows:

93-343. Appeals. If either party is dissatisfied with the judgment of the small claims court he may appeal to the district court of the county where the judgment was rendered, in the same fashion as appeals in other civil actions. Any such appeal shall be tried de novo.

In the event that the parties are represented by counsel on appeal, the judge may grant the prevailing party, in addition to costs, reasonable attorney fees.

Section 23. There is a new R.C.M. section numbered 93-344 that reads as follows:

93-344. Fees—cost. (1) The clerk of court shall collect a fee of five dollars ($5):

(a) from the plaintiff upon the filing of the affidavit;

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(b) from the defendant upon the filing of a written answer.

(2) The laws relating to paupers' affidavits apply to actions before the small claims courts.

(3) The prevailing party in an action before the small claims court is entitled to costs.

Section 24. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 29, 1975.

CHAPTER NO. 520

AN ACT TO AMEND SECTIONS 69-6806 AND 69-6807, R.C.M. 1947; TO PROVIDE FOR A FEASIBILITY STUDY TO DETERMINE RESOURCE RECOVERY VALUE IN SOLID WASTE; AND TO PROVIDE THAT THE MOTOR VEHICLE TITLE TRANSFER FEE BE CHANGED FROM FOUR DOLLARS TO TWO DOLLARS; AND THAT THE FEE FOR REREGISTERING FOR LICENSING OF A MOTOR VEHICLE BE CHANGED FROM ONE DOLLAR TO FIFTY CENTS; AND TO CHANGE THE FORMULA FOR PAYMENT TO COUNTIES BY ALLOWING THE DEPARTMENT TO FUND UP TO FIVE THOUSAND DOLLARS FOR THOSE COUNTIES THAT HAVE FEWER THAN FIVE THOUSAND MOTOR VEHICLES REGISTERED IN THAT COUNTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-6806, R.C.M. 1947, is amended to read as follows:

"**69-6806. Crushing and recycling of junk vehicles.** (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least two hundred (200) vehicles at the facility.

(3) All moneys received from the sale of the junk vehicles or from recycling of the material shall be deposited with the state treasurer to be utilized for:

(a) control, collection, and disposal of junk vehicles; *and*

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(b) to conduct a feasibility study to determine the suitability of resource recovery from our solid waste, the cost of which may not exceed two hundred thousand dollars ($200,000), and the results of which will be made available to the public and legislature by 1977.

(4) Any individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle, or a written release of the vehicle."

Section 2. Section 69-6807, R.C.M. 1947, is amended to read as follows:

"69-6807. Deposit of fees — special junk vehicle assessment fee. (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for*:*

(a) control, collection, and disposal of junk vehicles*; and*

(b) to conduct a feasibility study to determine the suitability of resource recovery from our solid waste, the cost of which may not exceed two hundred thousand dollars ($200,000), and the results of which will be made available to the public and legislature by 1977.

(2) There is assessed a special junk vehicle disposal fee commencing on July 1, 1973, on each new application for a motor vehicle title and on each transfer of motor vehicle title in the amount of *two* dollars *($2)*, on passenger cars and trucks under 8001 pounds GVW, which shall be collected by the county treasurer, and commencing with the year 1974, there shall be assessed an additional special junk vehicle disposal fee in the amount of *fifty cents ($.50)* on each passenger car and truck under 8001 pounds GVW registered for licensing. The *fifty cents ($.50)* fee shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in section 53-122, while owned by a dealer;

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this act and the cost of administration of the act to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved budget of the county. *The* yearly payment may not exceed one dollar ($1)

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for each motor vehicle *under 8001 pounds GVW* that is licensed in that county. *However, for those counties that have fewer than five thousand (5,000) such motor vehicles, the department may pay up to five thousand dollars ($5,000), providing the county can justify this payment."*

Approved April 29, 1975.

CHAPTER NO. 521

AN ACT AMENDING SECTIONS 16-4505, 16-4507, 16-4508, AND 16-4520, R.C.M. 1947, TO CLARIFY WHO MAY VOTE IN RELATION TO THE FORMATION AND OPERATION OF COUNTY WATER AND SEWER DISTRICTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4505, R.C.M. 1947, is amended to read as follows:

"**16-4505. Proposition submitted — who may vote — certificate of secretary of state — district deemed incorporated — must hear testimony — suit commenced within one year — election.** Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words ".... county water and/or sewer district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize .... county water and/or sewer district under (naming the chapter containing this act) of the acts of the .... session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared

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in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of voters under the general election laws of the state, and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district; provided however a person who is the owner of such real property need not possess the qualifications required of a voter in subsection (1)(c) of section 23-2701, R.C.M. 1947; provided further that such voter shall be qualified if he is registered to vote in any state of the United States. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If at least forty percent (40%) of all *registered* voters *residing* within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future."

Section 2. Section 16-4507, R.C.M. 1947, is amended to read as follows:

"**16-4507. Nomination of officers.** (1) The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

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PETITION OF NOMINATION
Individual Certificate

State of ....
County of ....

Prect. No. .....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ...., whose residence is at .... for the office of .... of the .... district to be voted for at the district election to be held in the .... district on the .... day of ...., 19..; and I further certify that I am a qualified elector and an owner or lessee of real property within said district, or a resident therein, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No. .... street, ..., and that my occupation is ....

(Signed) .....

State of Montana
County of ....

...., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) .....

Subscribed and sworn to before me this .... day of .... 19...

.....
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to ...., at ...., Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the county clerk whose county contains the largest percentage of the territory of said district shall fulfill this function.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector owning *real property* or residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate,

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may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in each county in which such district is located. Such

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proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION

.... District,

(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (x) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

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(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said district.

(22) Informality not to invalidate. No informality in conducting district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act."

Section 3. Section 16-4508, R.C.M. 1947, is amended to read as follows:

"**16-4508. General law to govern.** The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections, except as in this act otherwise provided; provided, however, that where a corporation owns real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any district election, including any district bond election. If the district lies in more than one county, the board of commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election."

Section 4. Section 16-4520, R.C.M. 1947, is amended to read as follows:

"**16-4520. Publication.** Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in each county wherein such district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning or residing upon real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district."

Approved April 29, 1975.

CHAPTER NO. 522

AN ACT AMENDING THE FIRE HAZARD REDUCTION LAWS BY CLARIFYING THOSE LAWS; REQUIRING PERSONS CLEARING RIGHT OF WAY TO NOTIFY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE CLEARING; PROVIDING FOR MONTHLY PAYMENTS OF WITHHELD MONIES TO

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REDUCE FIRE HAZARDS; INCREASING THE PERMISSIBLE MAXIMUM OF THE HAZARD REDUCTION PAYMENTS TO THE DEPARTMENT; AMENDING SECTIONS 28-404 THROUGH 28-408, 28-410, AND 28-412, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 28-403.1, R.C.M. 1947, that reads as follows:

28-403.1. Definitions. As used in this chapter: (1) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15.

(2) "Board" means the board of natural resources and conservation, provided for in section 82A-1509.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

Section 2. Section 28-404, R.C.M. 1947, is amended to read as follows:

"**28-404. Reduction or management of fire hazard created by cutting timber.** *Before* cutting any forest product or conducting *timber stand* improvement such as, but not limited to, thinning, weeding, *or* pruning, upon private lands within the state *the person conducting such practice* shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement *with the department and* by posting a bond to the state in such form and for such amount as may be prescribed by the department, conditioned upon full and faithful compliance with all requirements under *this chapter* and the faithful reduction or management of *the* fire *hazard* in the manner prescribed by law *and by rules adopted by the board. The* bond shall be released upon completion of the work *done* in compliance with the terms of the *agreement.*"

Section 3. Section 28-405, R.C.M. 1947, is amended to read as follows:

"**28-405. Reduction of slash and forest debris along right of way.** *(1) A person* clearing right of way for any railroad, public highway, public trail, private road, trail, ditch, dyke, pipeline or wire lines, or any other transmission or transportation utility right of way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from *the* clearing or from the cutting of material for the construction of *the* public or private utility unless exempted by the department. *At least ten (10) days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.*

(2) Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; *however,* upon application to the department *it* may grant a permit extending the time within which *the* burning must be done in compliance with this

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chapter, *and chapter 1 of this title* relating to burning permits during the closed season.

(3) This section *applies* to all clearing of rights of way across private land and on behalf of the state, county, highway districts, and road districts, whether the work *is* done by day labor, or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting *the* work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this *chapter.*

(4) In addition to the penalty provided *in section 28-413,* the offender may be enjoined, at the instance of the department, from proceeding with *the* work until this section *has* been complied with; and, upon application of the department to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with *this section."*

Section 4. Section 28-406, R.C.M. 1947, is amended to read as follows:

"28-406. Purchaser will insure compliance, prior to purchase, will transmit withheld money to department. The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the *state* shall, before making *the* purchase or contract to purchase, determine that the *person* engaged, or about to engage, in the cutting of these forest products, has provided for the reduction or management of the fire hazard thus created, as provided in *this chapter.* When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to insure faithful compliance with *this chapter, the* purchaser *shall* transmit *all* moneys which are withheld to the *department on or before the fifteenth (15th) day of each month, clearly identifying by number or other appropriate means the hazard reduction agreement to which the withheld moneys pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time. Upon the department making the determination that faithful compliance with this chapter has been achieved, the department shall return to the owner thereof all such withheld monies with the exception of two percent (2%) for inspection fees."*

Section 5. Section 28-407, R.C.M. 1947, is amended to read as follows:

"28-407. Disposal of slash — injunction against further cutting — disposal at expense of owner — lien and enforcement — orders. *(1) If a person fails, refuses, or neglects* to properly dispose of slash in accordance with the requirements of sections 28-404 and 28-406, and is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products, and thereby *creates* a fire hazard, he may be enjoined from cutting *the* timber until sections 28-404 and 28-406 *have been complied with. The* department *may initiate the proceedings,* and the court may in its discretion grant a temporary injunction. *The* proceedings shall be *conducted* in the district court of the county where the land is located.

(2) If a person fails to comply with sections 28-404 and 28-406, and has cut any forest products and *fails to comply within* thirty (30) days

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after being notified to do *so* by the department, the department may complete, direct, or authorize the disposal of *the* slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which *the* fire hazard remains undisposed of.

(3) The cost and expense of *the* disposal, plus twenty per cent (20%) of the cost and expense of *the* disposal as a penalty, *constitutes* a lien upon the forest products so cut or produced from *the* land. If payment of the sum demanded *is* not made to the department within ten (10) days of *its* written demand, the department shall bring legal action on behalf of the state to recover the debt.

(4) The department shall not file for record any lien against the property of any person who has been issued a *certification* of compliance with sections 28-404 and 28-406, covering *the* property."

Section 6. Section 28-408, R.C.M. 1947, is amended to read as follows:

"**28-408. Supervision by department — rules of board.** (1) The department, under such rules as the board *adopts, may* supervise *and inspect* the reduction or management of any fire hazard created by the cutting of any forest product on private land in the state.

(2) The reduction or management of fire hazards referred to in this *chapter* shall be in keeping with modern and progressive forest practices and more effective fire control and may include *but are not* limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard."

Section 7. Section 28-410, R.C.M. 1947, is amended to read as follows:

"**28-410. Contracts with owners of forest lands.** The department *may, in such form and containing such conditions as it prescribes,* enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state whereby slash is created. *Under the* contract the department may assume all responsibility for the reduction or management of any fire hazard. *The department may* provide *in the agreement* the amount to be paid by the owner or operator to the department by reason of its agreement to assume the reduction or management of *the* fire hazard, *but the* amount *may* not exceed *five* dollars *($5)* for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut."

Section 8. Section 28-412, R.C.M. 1947, is amended to read as follows:

"**28-412. Certification of clearance.** *A person* who has entered into a contract with the department for the reduction or management of any fire hazard, upon payment of the contract price in accordance with the terms of *the* contract and the full compliance with the terms of *the* contract by *the person,* shall be granted a *certification* of clearance *by the department* and be relieved of any and all further liability and responsibility for the removal or reduction of *the* fire hazard; however, the department may require *that* a cash bond, equivalent to the contract price, and conditioned upon the faithful performance of *the* contract, be deposited by the *person* with the department."

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Section 9. There is a new R.C.M. section numbered 28-413, that reads as follows:

28-413. Violations. A person convicted of violating this chapter is guilty of a misdemeanor and shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1000).

Approved April 29, 1975.

CHAPTER NO. 523

AN ACT TO ESTABLISH A NURSING HOME LOCATION COMMITTEE, DEFINE ITS DUTIES, AND THE DUTIES OF THE DEPARTMENT OF INSTITUTIONS IN RELATION TO THE COMMITTEE; PROVIDE AN EXPIRATION DATE; AND PROVIDE AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 80-2413 that reads as follows:

80-2413. Legislative intent. (1) It is the intent of the legislature that geriatric patients at Warm Springs state hospital and geriatric residents of the state, who may in the future be placed at Warm Springs state hospital and who do not need intensive psychiatric care, receive care and treatment in nursing homes located in community settings.

(2) It is the further intent of the legislature that nursing homes providing such care and treatment be located regionally so that the residents may be near their homes and families.

(3) It is the further intent of the legislature that these nursing homes shall be located in communities with:

(a) a labor pool large enough to ensure adequate and qualified staffing;

(b) sufficient medical facilities and medical professionals to provide necessary medical services; and

(c) if possible, an institution or institutions of higher learning with educational programs in disciplines with relevance to the problems of aging.

Section 2. **Nursing home location committee.** (1) There is a nursing home location committee.

(2) The committee is composed of nine (9) members to be selected as follows:

(a) one (1) person, with experience in the field of geriatrics appointed by the governor, from each of the five (5) mental health regions;

(b) one (1) representative of nursing home administrators within the state, appointed by the governor;

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(c) one (1) medical doctor licensed to practice in the state, appointed by the governor; and

(d) the director of institutions and the director of health and environmental sciences or their designees.

(3) The committee is a quasi-judicial board for the purposes of subsections (4), (5), (6), (7) and (8) of section 82A-112.

(4) The committee is allocated to the department of institutions for administrative purposes only as provided in section 82A-108.

Section 3. **Duties of the committee.** (1) The nursing home location committee shall select communities for the location of state-owned nursing homes authorized by legislative appropriation.

(2) In selecting communities, the committee shall adhere to the principles enunciated in section 80-2413.

(3) In addition, the committee may consider donation of land to the state by a private individual or a local government for the purpose of establishing a nursing home under this act.

(4) The committee shall make the necessary selection of communities for the location of nursing homes authorized by the Forty-fourth Legislature prior to September 1, 1975.

Section 4. There is a new R.C.M. section numbered 80-2414 that reads as follows:

80-2414. Duties of department of institutions. The department of institutions:

(1) shall contract with nonprofit corporations, which demonstrate expertise in and the capability of providing rehabilitative and restorative programs for aged citizens, for the operation and management of nursing homes established under this act;

(2) shall ensure that nursing homes established and operated under this act are in compliance with all applicable federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) shall provide that geriatric residents of Warm Springs state hospital have first priority for admission to nursing homes established under this act;

(5) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state and local government agencies for the purposes of establishing and operating nursing homes under this act.

Section 5. **Expiration date.** Sections 2 and 3 of this act are repealed on June 30, 1977.

Section 6. **Effective date.** This act is effective upon passage and approval.

Approved April 29, 1975.

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CHAPTER NO. 524

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO DISCRIMINATION IN EMPLOYMENT, PUBLIC ACCOMMODATIONS, EDUCATION, REAL PROPERTY LAW AND RELATING TO THE HUMAN RIGHTS COMMISSION; AMENDING SECTION 64-301, 64-305 THROUGH 64-312, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 64-301, R.C.M. 1947, is amended to read as follows:

"**64-301. Freedom from discrimination as civil right — employment — public accommodations.** The right to be free from discrimination because of race, creed, color, sex, physical *or mental* handicap, *age,* or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(1) The right to obtain and hold employment without discrimination.

(2) The right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement."

Section 2. Section 64-305, R.C.M. 1947, is amended to read as follows:

"**64-305. Definitions.** As used in this act, unless the context requires otherwise:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in section 82A-1015.

(3) "Educational institution" means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, university, a business, nursing, professional, secretarial, technical or vocational school or an agent of an educational institution.

(4) "Employee" means any individual employed by an employer.

(5) "Employer" means an employer of one (1) or more persons but does not include a fraternal, charitable, or religious association or corporation, if the association or corporation is not organized for private profit; or to provide accommodation or services that are available on a nonmembership basis.

(6) "Employment agency" means a person undertaking to procure employees or opportunities to work.

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(7) "Financial institution" means a commercial bank, trust company, mutual savings bank, co-operative bank, homestead association, finance company, mutual savings and loan association or an insurance company.

(8) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(9) "Labor organization" means an organization and an agent of the organization, organized for the purpose, in whole or in part, of collective bargaining, dealing with employers concerning grievances, terms of conditions of employment, or of other mutual aid protection of employees.

(10) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning *or* impaired social competence.

(11) "National origin" means ancestry.

(12) "Person" means one (1) or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations.

(13) "Physical handicap" means any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, wheelchair, or other remedial appliance or device.

(14) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public including but not limited to a public inn, restaurant, eating house, hotel, roadhouse, place where food or spirituous or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, night club, trailer park, resort, campground, barber shop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, hospital, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

(15) "Staff" or "commission staff" means the staff of the human rights commission."

Section 3. Section 64-306, R.C.M. 1947, is amended to read as follows:

"64-306. Discriminatory practices described and prohibited. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, religion, *marital status,* color, or national origin or because of his age, physical or mental handicap or sex when the reasonable demands of the position do not require an age, physical or mental handicap or sex distinction;

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(b) a labor organization, *or joint labor management committee controlling apprenticeship,* to exclude or expel *any person* from its membership, *or from an* apprenticeship or training program or to discriminate in any way against a member of, or an applicant to, the labor organization, or an employer or employee *because of race, marital status, religion, color or national origin or because of his age, physical or mental handicap or sex when the reasonable demands of the program do not require an age, physical or mental handicap or sex distinction*;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment, which expresses, directly or indirectly, a limitation, specification or discrimination as to sex, *marital status,* age, physical or mental handicap, race, creed, color, or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to *fail or refuse to refer for employment, to classify* or otherwise *to* discriminate against *any individual* because *of sex, marital status, age, physical or mental handicap, race, creed, color or national origin, unless based upon a bona fide occupational qualification;*

(e) the exceptions permitted in this subsection based on bona fide occupational qualifications, shall be strictly construed.

(2) It is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, religion, color, or national origin *unless based on reasonable grounds*;

(b) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any of the services, goods, facilities, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, religion, sex, age, physical or mental handicap, color or national origin except when the distinction is based on reasonable grounds.

(3) It is an unlawful discriminatory practice for the owner, lessee, manager or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, religion, color, age, physical or mental handicap, or national origin, except when the distinction is based on reasonable grounds;

(b) to discriminate against a person because of sex, race, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds; or

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(c) to make a written or oral inquiry or record of the sex, race, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property, except when the distinction is based on reasonable grounds. *A* private residence designed for single family occupancy, in which sleeping space is rented to guests in the family home in which the landlord also resides, *shall* be excluded from the provisions of this act.

(4) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance to permit an official or employee during the execution of his duties to discriminate against the applicant because of sex, *marital status,* race, religion, age, physical or mental handicap, color, or national origin in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance *unless based on reasonable grounds.*

(5) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, religion, sex, *marital status,* color, age, physical or mental handicap, or national origin *unless based on reasonable grounds*;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, religion, sex, *marital status,* color, age, physical or mental handicap, or national origin or that the patronage of a person belonging to a particular race, creed, sex, *marital status,* color, or certain age or national origin or possessing a physical or mental handicap, is unwelcome, or not desired or solicited *unless based on reasonable grounds;*

(c) to refuse employment to a person, or to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an elected officer of the executive branch provided for in article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in article VI, section 7, of the Montana constitution*, or to the immediate staff of the majority and minority leadership of the Montana legislature.*

(6) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, condition, and privileges of the institution because of race, *religion, sex, marital status,* color, age, physical handicap, or national origin or because of mental handicap unless based on reasonable grounds;

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(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, *sex, marital status, age,* religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, religion, age, physical or mental handicap, sex, *marital status,* or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of race, color, *sex, marital status, age,* religion, physical or mental handicap, or national origin.

(7) It is an unlawful discriminatory practice for a person to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this act.

(8) Any grounds urged as a "reasonable" basis for an exemption under any section of this act shall be strictly construed."

Section 4. There is a new R.C.M. section numbered 64-306.1 that reads as follows:

64-306.1. Exemptions — records. (1) A person who seeks to be exempted from the requirements of section 64-306 may petition the commission for a declaratory ruling as provided in section 82-4218 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed and the burden shall be on the petitioner to demonstrate that an exemption should be granted.

(2) The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights law and regulations. These records are confidential and available only to federal and state personnel legally charged with administering federal civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

Section 5. Section 64-307, R.C.M. 1947, is amended to read as follows:

"**64-307. Discrimination justified — when.** (1) Sex, *marital status,* age, physical or mental handicap, race, religion, color or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

(2) Separate lavatory, bathing or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy."

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Section 6. Section 64-308, R.C.M. 1947, is amended to read as follows:

"**64-308. Complaint — how filed — by whom.** (1) A *complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this act. The complaint shall be in the form of a written, verified complaint stating the name and address of the person alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.* The *commission staff* may file a complaint in like manner when a discriminatory practice comes to its attention. *A complaint under this act must be filed with the commission within one hundred eighty (180) days after the alleged unlawful discriminatory practice occurred or was discovered. Any complaint not filed within the time set forth herein may not be considered by the commission.*

(2) The *staff* shall notify the commission in writing of all complaints filed with the *commission.* The commission shall meet a minimum of four (4) times a year to hear and act upon all complaints filed. *In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.*

(3) At any time after a complaint is filed under this act, alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs, or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint. The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond fourteen (14) days may be granted except by consent of the respondent *or* upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

(4) The *commission staff* shall informally investigate the matters set out in a filed complaint promptly and impartially. If the *staff* determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

(5) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the *staff* shall inform the commission of the failure and the commission shall cause written notice to be served together with a copy of the complaint, requiring the person, employer, business, corporation or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission. The hearing shall be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, employer, business, corporation, organization, agency or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the *staff,* the complainant or by an attorney representing the complainant. The hearing and any subsequent proceedings under the act except as permitted under section 64-310 shall be held in accordance with the Montana Administrative Procedure Act.

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(6) The commission may make provision for defraying the expenses of any indigent party in a contested hearing held pursuant to this act."

Section 7. Section 64-309, R.C.M. 1947, is amended to read as follows:

"64-309. Power of commission on finding of discrimination. (1) If the commission finds that a person against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, it shall order him to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The order may not require the payment of any punitive damages as defined by the Revised Codes of Montana.

(3) If the commission finds that a person against whom a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

(4) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time shall be no more than three (3) years."

Section 8. Section 64-310, R.C.M. 1947, is amended to read as follows:

"64-310. Injunction to enforce commission order. *If the commission's order is not obeyed, the commission staff shall* petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction."

Section 9. Section 64-311, R.C.M. 1947, is amended to read as follows:

"64-311. Staff may include attorney. (1) The *staff* may *include* an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, shall assist in the preparation and presentation of complaints to the commission, and shall represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission."

Section 10. Section 64-312, R.C.M. 1947, is amended to read as follows:

"64-312. Unlawful to violate act — penalty. (1) It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this act or to attempt to do so.

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(2) No person or institution may discharge or discriminate against any *other person* because he or she has made a complaint, assisted with an investigation or *proceeding under this act or in any other manner opposed any practice made unlawful under this act.*

(3) A person, employer, business, organization, corporation or agency, both public and private, who or which willfully engages in an unlawful discriminatory practice prohibited by this act or willfully resists, prevents, impedes, or interferes with the commission, the department or any of its authorized representatives in the performance of duty under this act or who or which willfully violates an order of the commission or violates this act in any other manner, is guilty of a misdemeanor and is punishable by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six (6) months or both."

Section 11. There is a new R.C.M. section numbered 64-313 that reads as follows:

64-313. Powers of commission — subpoena. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths and in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in section 82-4220 of the Montana Administrative Procedure Act.

Section 12. There is a new R.C.M. section numbered 64-314 that reads as follows:

64-314. Commission may require notice. The commission may require any employer, employment agency, labor union, educational institution, financial institution, or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this act to post in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission deems necessary to explain the act. Any person subject to this section refusing to comply with an order of the commission respecting the posting of notice is guilty of a misdemeanor, punishable by a fine of not more than fifty dollars ($50).

Section 13. There is a new R.C.M. section numbered 64-315 that reads as follows:

64-315. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this act. Rule making procedures shall comply with the requirements of the Montana Administrative Procedure Act.

Approved April 29, 1975.

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CHAPTER NO. 525

AN ACT REVISING THE TAXATION OF COAL PRODUCTION; PROVIDING FOR A SEVERANCE TAX ON COAL PRODUCED AT A PERCENTAGE OF VALUE; DELETING COAL FROM THE PROVISIONS TAXING THE NET PROCEEDS OF MINES; PROVIDING FOR TAXATION OF THE GROSS PROCEEDS FROM COAL AS AN ELEMENT IN THE PROPERTY TAX SYSTEM; PROVIDING FOR CERTAIN ROYALTIES; AMENDING SECTIONS 84-301, 84-302, 84-1309.1, AND 84-5402; AND REPEALING SECTIONS 84-1301 THROUGH 84-1309, 84-1310, AND 84-1311, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-1312 that reads as follows:

84-1312. Legislative findings and declarations of purpose. (1) The legislature finds that while coal is extracted from the earth like metal minerals, there are differences between coal and metal minerals such that they should be classified in different categories for taxation purposes. The legislature finds that while coal can be utilized like petroleum products, there are differences between coal and petroleum such that they should be classified in different categories for taxation purposes. The legislature further finds that:

(a) coal is the only mineral which can supply energy while being easily found in abundance in Montana;

(b) coal is the only mineral which is so often marketed through sales contracts of many years' duration;

(c) coal, unlike most minerals, varies widely in composition and consequent value when marketed;

(d) coal in Montana is subject to regional and national demands for development which could affect the economy and environment of a larger portion of the state than any other mineral development has done;

(e) coal in Montana, when sub-bituminous and recoverable by strip mining, is in sufficient demand that at least one-third (⅓) of the price it commands at the mine may go to the economic rents of royalties and production taxes;

(f) coal in the lignite form is in less demand and producers of lignite are able to pay lesser amounts of royalty and production tax than producers of sub-bituminous can pay;

(g) coal produced in underground mines has higher production costs and underground producers are able to pay lesser amounts of royalty and production tax than strip-mine producers can pay;

(h) coal production in Montana has been subject to an uncoordinated array of taxes which overlap one another and yield revenue in an inconsistent and unpredictable manner.

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(2) The legislature declares that the purposes of this chapter are:

(a) to allow the severance taxes on coal production to remain a constant percentage of the price of coal;

(b) to stabilize the flow of tax revenue from coal mines to local governments through the property taxation system;

(c) to simplify the structure of coal taxation in Montana, reducing tax overlap and improving the predictability of tax projections; and

(d) to accomplish the foregoing purposes by establishing categories of taxation which recognize the unique character of coal as well as the variations found within the coal industry.

Section 2. There is a new R.C.M. section numbered 84-1313 that reads as follows:

84-1313. Definitions. As used in this chapter: (1) "Contract sales price" means either (a) the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or (b) a price imputed by the department under section 84-1318.

(2) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(3) "Produced" means severed from the earth.

(4) "Strip mining" or "surface mining" is defined in section 50-1036.

(5) "Underground mining" means a coal mining method utilizing shafts and tunnels, and not regulated under section 50-1039.

(6) "Ton" means two thousand (2,000) pounds.

(7) "Department" means the department of revenue.

(8) "Taxes paid on production" include any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production, and do not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

Section 3. There is a new R.C.M. section numbered 84-1314 that reads as follows:

84-1314. Severance tax — rates imposed — exemptions. A severance tax is imposed on each ton of coal produced in the state, in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value

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7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	12 cents or 4% of value

The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule. "Value" means the contract sales price. A person is not liable for any severance tax upon the first five thousand (5,000) tons of coal he produces in a quarter-year.

Section 4. There is a new R.C.M. section numbered 84-1315 that reads as follows:

84-1315. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and such other information as the department may require. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than thirty (30) days following the close of the quarter. The form shall be verified by an officer of the coal mine operator. A person operating more than one coal mine in this state may include all of his mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.

Section 5. There is a new R.C.M. section numbered 84-1316 that reads as follows:

84-1316. Penalty for delinquent tax. The department shall add to the amount of all delinquent severance taxes a penalty of ten percent (10%) of the delinquent amount plus interest at the rate of one percent (1%) per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment. The department shall mail to the person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty and interest due, and the letter shall further contain a statement that if payment is not made within fifteen (15) days a lien may be filed as set forth in section 84-1323. The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department.

Section 6. There is a new R.C.M. section numbered 84-1317 that reads as follows:

84-1317. Annual testing of samples. The Montana state bureau of mines and geology shall test coal production subject to this chapter and may make rules governing the collection of test data. A person subject to this chapter shall submit to the bureau on or before August 1 each year a sample of mine run "as is" coal from each mine producing that year. Additional samples shall be submitted at the request of the bureau.

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The bureau shall compute the Btu per pound of each sample received and forward this information to the department prior to September 1 each year.

Section 7. There is a new R.C.M. section numbered 84-1318 that reads as follows:

84-1318. When value of coal may be imputed — procedure. In a case where

(a) the operator of a coal mine is using the produced coal in an energy conversion or other manufacturing process, or

(b) a person sells coal under a contract which is not an arm's-length agreement, or

(c) a person neglects or refuses to file a statement and tax return under this chapter, the department may impute a value to the coal which approximates market value f.o.b. mine. When imputing value, the department may apply the factors used by the federal government under 26 U.S.C. section 613, or that provision as it may be labelled or amended, in determining gross income from mining, or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall, upon request by the department, furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party.

Section 8. Section 84-1309.1, R.C.M. 1947, is renumbered 84-1319, and is amended to read as follows:

"**84-1319. Disposal of license or severance taxes.** License *or severance* taxes collected under the provisions of this chapter *or such sections as may enact a severance tax on coal in 1975* are allocated as follows:

(1) To the county *for such purposes as the governing body of that county may determine* from which coal was mined *for each calendar year prior to January 1, 1980,* three cents (3¢) per ton *or four percent (4%) of the severance tax paid on the coal mined in that county, whichever is higher and for each calendar year following December 31, 1979, this amount shall be three cents (3¢) per ton or three and one-half percent (3 ½%) of the severance tax on the coal mined in that county, whichever is higher.*

(2) To the earmarked revenue fund, such portions of the severance tax as may be authorized by laws enacted in 1975.

(3) All other revenues from license *or severance* taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state."

Section 9. There is a new R.C.M. section numbered 84-1320 that reads as follows:

84-1320. Reporting gross proceeds from coal. Each person engaged

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in mining coal must, on or before March 31 each year file with the department a statement of the gross yield from each coal mine owned or worked by such person in the preceding calendar year, and the value thereof. The statement shall be in the form prescribed by the department of revenue, which may be coordinated with the form used under section 84-1316, and must be verified by an officer of the firm. The statement shall include:

(1) The name and address of the owner or lessee or operator of the mine.

(2) The location of the mine.

(3) The tons of ore extracted, treated, and sold from the mine during the taxable period.

(4) The gross yield or value in dollars and cents derived from the contract sales price.

Section 10. There is a new R.C.M. section numbered 84-1321 that reads as follows:

84-1321. Transmission of gross proceeds from coal to county assessor. On or before July 1 each year the department shall transmit to the county assessor of each county in which coal mines are situated, the valuation of the gross proceeds of such mines for the purpose of taxation, as the same have been determined by the department. The county assessor shall immediately enter the same upon a suitable assessment roll, the form of which shall be prescribed by the department.

Section 11. There is a new R.C.M. section numbered 84-1322 that reads as follows:

84-1322. Taxation of gross proceeds from coal. The county assessor shall prepare from the reported gross proceeds from coal a tax roll, which he shall transmit to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice thereof to each coal producer and to collect the taxes due within sixty (60) days after mailing.

Section 12. There is a new R.C.M. section numbered 84-1323 that reads as follows:

84-1323. Lien of tax — enforcement of payment. The tax on gross proceeds from coal shall be levied as taxes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is a lien, as provided under sections 84-4202 through 84-4211, or by suit under sections 84-4301 through 84-4302.

Section 13. There is a new R.C.M. section numbered 84-1324 that reads as follows:

84-1324. Penalties for neglect or false statement. A person who fails, neglects, or refuses to file any statement required under this

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chapter, or who makes a false statement commits a misdemeanor. A person convicted under this section shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Section 14. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, *except coal mines,* after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; *the annual gross proceeds of underground coal mines;* and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including

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all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services

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of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. The annual gross proceeds of coal mines using the strip mining method.

Class *Ten.* All property not included in the *nine (9)* preceding classes."

Section 15. Section 84-302, R.C.M. 1947, is amended to read as follows:

"**84-302. Basis for imposition of taxes.** As a basis for the imposition

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of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100%) of its true and full value.

Class 2. Twenty per cent (20%) of its true and full value.

Class 3. Thirty-three and one-third per cent (33 ⅓%) of its true and full value.

Class 4. Thirty per cent (30%) of its true and full value.

Class 5. Seven per cent (7%) of its true and full value.

Class 6. As specified in section 84-308, R.C.M. 1947.

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Fifteen per cent (15%) of its true and full value.

Class 9. *Forty-five per cent (45%)* of its true and full value.

Class 10. Forty per cent (40%) of its true and full value."

Section 16. Section 84-5402, R.C.M. 1947, is amended to read as follows:

"**84-5402. Net proceeds tax—statement of yield, penalty, extension of time.** Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, lead, petroleum, natural gas, or other valuable mineral, *except coal,* must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state department of revenue, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state department of revenue on or before the thirty-first day of March. Such statement shall show the following:

1. The name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons, corporations, or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons, corporations or associations during the period covered by the statement.

2. The description and location of the mine.

3. The number of tons of ore, barrels of petroleum, cubic feet of natural gas or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement.

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4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits from such mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of said ores or mineral products or deposits measured by standard units of measurement, yielded to such person, corporation or association so engaged in mining, and to said royalty holders and each of them, if any, during the period covered by the statement.

5. The gross yield or value in dollars and cents.

6. Actual cost of extracting same from mine.

7. Actual cost of transporting to place of reduction or sale.

8. Actual cost of reduction or sale.

9. Actual cost of marketing the product and conversion of same into money.

10. Cost of construction, repairs and betterments of mines, and cost of repairs and replacements of reduction works.

11. The assessed valuation of reduction works for the calendar year for which such return is made.

12. Actual cost of fire insurance and workmen's compensation insurance.

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state department of revenue when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of ⅔ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state department of revenue required by this section. The state department of revenue shall assess a penalty of $25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state department of revenue and deposited to the credit of the general fund of the state of Montana.

The state department of revenue shall, upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section. This penalty shall be in addition to penalties provided in section 84-5410."

Section 17. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. There is a new R.C.M. section numbered 84-1325 that reads as follows:

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84-1325. Royalties as percentage of value. (1) If the board of land commissioners leases any state lands for coal mining after the effective date of this act with the royalty to the state of Montana stated as a percentage of the value of the coal, the contract shall define value as the contract sales price as defined in section 84-1313.

(2) In any civil action involving a royalty to any person owning coal in this state, in which the royalty is stated as a percentage of the value of the coal, such "value" shall be construed by the court to be the contract sales price as defined in section 84-1313, unless the terms of the contract plainly indicate a different definition of value.

Section 19. **Repealer.** Sections 84-1301 through 84-1309, 84-1310, and 84-1311, R.C.M. 1947, are repealed.

Approved May 1, 1975.

CHAPTER NO. 526

AN ACT AMENDING SECTIONS 53-438 AND 40-4403, R.C.M. 1947, TO INCREASE THE MINIMUM PROOF OF FINANCIAL RESPONSIBILITY FROM TEN THOUSAND DOLLARS TO TWENTY-FIVE THOUSAND DOLLARS BECAUSE OF BODILY INJURY TO OR DEATH OF ONE PERSON IN ANY ONE ACCIDENT, TO INCREASE FROM TWENTY THOUSAND DOLLARS TO FIFTY THOUSAND DOLLARS THE AMOUNT REQUIRED FOR BODILY INJURY TO OR DEATH OF TWO (2) OR MORE PERSONS IN ANY ONE ACCIDENT, AND TO INCREASE THE UNINSURED MOTORIST REQUIREMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-438, R.C.M. 1947, is amended to read as follows:

"**53-438. Motor vehicle liability policy defined.** (a) A "motor vehicle liability policy" as said term is used in this act shall mean an owner's or operator's policy of liability insurance, certified as provided in section 53-436 or section 53-437 as proof of financial responsibility and issued, except as otherwise provided in section 53-437, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance

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or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: *twenty-five thousand dollars ($25,000)* because of bodily injury to or death of one person in any one accident and subject to said limit for one person, *fifty thousand dollars ($50,000)* because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this act as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this act.

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

1. the liability of the insurance carrier with respect to the insurance required by this act shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;

2. the satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

3. the insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section;

4. the policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the act shall constitute the entire contract between the parties.

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(g) No motor vehicle policy shall be subject to cancellation, termination, or premium increase, due to injury or damage incurred by the insured or operator unless the insured or operator be found to have violated a traffic law or ordinance of the state or a city, be found negligent or contributorily negligent in a court of law, or by the arbitration proceedings contained in chapter 201 of Title 93, R.C.M. 1947, or pays damages to another party whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

(h) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this act. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(i) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this act.

(j) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(k) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(1) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(m) A reduced limits endorsement shall not be issued by any company to be attached to any policy issued in compliance with this section."

Section 2. Section 40-4403, R.C.M. 1947, is amended to read as follows:

"**40-4403. Motor vehicle liability policies to include uninsured motorist coverage — rejection of coverage by insured.** No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section *53-438*, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and, provided further, that unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a

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renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer."

Approved May 1, 1975.

CHAPTER NO. 527

AN ACT TO PROTECT LAKESHORES BY REQUIRING A PERMIT FOR ANY WORK WHICH WOULD ALTER OR DIMINISH A LAKE; REQUIRING LOCAL GOVERNING BODIES TO ADOPT REGULATIONS GOVERNING THE ISSUANCE OF SUCH PERMITS; PROVIDING FOR VARIANCES, JUDICIAL REVIEW, AND FUNDING; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 89-3701 that reads as follows:

89-3701. Declaration of policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this act to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

Section 2. There is a new R.C.M. section numbered 89-3702 that reads as follows:

89-3702. Definitions. As used in this act—

(1) "Lake" means a body of standing water, and the area within its lakeshore, occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least one hundred sixty (160) acres for at least six (6) months in a year of average precipitation as such averages are determined by the United States Geological Survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats. A local governing body may by resolution change the minimum size in the definition of a lake so that this act may apply to natural lakes in the county no smaller than twenty (20) acres in water surface area.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high water elevation, including the land within twenty (20) horizontal feet from that high water elevation.

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(3) "Mean annual high water elevation" is the mean average of the highest elevation of a lake in each of at least five (5) consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high water elevation.

(4) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this act.

Section 3. There is a new R.C.M. section numbered 89-3703 that reads as follows:

89-3703. Work for which permit required. A person who proposes to do any work which will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body. Without limitation, the following activities are, when conducted below mean annual high water elevation, examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning; filling; constructing breakwaters of pilings; wharves and docks.

Section 4. There is a new R.C.M. section numbered 89-3704 that reads as follows:

89-3704. Criteria for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations, in the form of criteria, for the issuance or denial of permits for work in lakes. Where a planning board has been created under section 11-3801 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this act.

(2) The regulations shall favor issuance if the proposed work will not, during either its construction or its utilization:

(a) materially diminish water quality,

(b) materially diminish habitat for fish or wildlife,

(c) interfere with navigation or other lawful recreation,

(d) create a public nuisance, or

(e) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

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(5) The requirements of subsection (2) of this section are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

(6) The department of natural resources and conservation may, upon petition of five (5) owners or thirty percent (30%) of the owners of land abutting a lake, whichever is smaller, adopt such regulations for the particular lake. The department may then exercise the powers conferred upon a local governing body by this act until the governing body adopts the necessary regulations.

Section 5. There is a new R.C.M. section numbered 89-3705 that reads as follows:

89-3705. Application for permits — procedure. A person seeking a permit for work in a lake shall apply to the local governing body, and shall pay an application fee of ten dollars ($10) to the governing body. Where a planning board has been created under section 11-3801 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit, and may require the applicant to submit additional information before the board reports its recommendations. In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

Section 6. There is a new R.C.M. section numbered 89-3706 that reads as follows:

89-3706. Consideration of applications by governing body. Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within ninety (90) days of receiving an application for a permit. If the governing body finds that the proposed work conforms to the criteria for issuing a permit it shall issue a permit or conditional permit. If the governing body finds that the work does not conform to the criteria, it shall deny the application.

Section 7. There is a new R.C.M. section numbered 89-3707 that reads as follows:

89-3707. Variance procedure. A governing body which proposes to grant a variance from its regulations under this act shall first prepare an environmental impact statement at the expense of the applicant which conforms to the requirements of regulations adopted pursuant to this act, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

Section 8. There is a new R.C.M. section numbered 89-3708 that reads as follows:

89-3708. Restoration — property rights. (1) A person who performs work in a lake after the effective date of this act without a permit for

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that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

(2) Work or development authorized or approved under this act shall not create a vested property right in the permitted development, other than in the physical structure, if any, so developed.

Section 9. There is a new R.C.M. section numbered 89-3709 that reads as follows:

89-3709. Cooperation between governing bodies. If a lake, as defined by this act, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this act, and establish compatible criteria for denial or issuance of permits.

Section 10. There is a new R.C.M. section numbered 89-3710 that reads as follows:

89-3710. Judicial enforcement and review. The district court may hear and decide the following cases arising under this act within the district:

(1) A complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake.

(2) A petition of an interested person for review of a final action of a governing body upon an application for a permit.

(3) A petition of an interested person for review of an action of a governing body in adopting or amending regulations.

Section 11. There is a new R.C.M. section numbered 89-3711 that reads as follows:

89-3711. Penalty. A person who violates an order issued under this act or who knowingly violates a regulation made under this act commits a misdemeanor, and on conviction may be sentenced to thirty (30) days in the county jail or fined five hundred dollars ($500), or both. Fines collected under this section shall be paid to the general fund of the county where the offense was committed for the purpose of administering this act.

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. There is a new R.C.M. section numbered 89-3712 that reads as follows:

89-3712. Funding. In compliance with section 43-517, R.C.M. 1947, the administration of this act is declared a public purpose of a city or county which may be paid out of permit application fees collected under section 89-3705 and federal revenue sharing moneys.

Section 14. **Effective date.** This act is effective upon passage and approval.

Approved May 1, 1975.

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CHAPTER NO. 528

AN ACT TO BE KNOWN AS THE "REALTY TRANSFER ACT"; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7301 that reads as follows:

84-7301. Short title. This act may be cited as the "Realty Transfer Act".

Section 2. There is a new R.C.M. section numbered 84-7302 that reads as follows:

84-7302. Purpose. The purpose of this act is to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical and reliable method.

Section 3. There is a new R.C.M. section numbered 84-7303 that reads as follows:

84-7303. Definitions. As used in this act:

(1) "Transfer" means an act of the parties, or of the law, by which the title to real property is conveyed from one person to another.

(2) "Real estate" includes:

(a) land,

(b) growing timber,

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

(3) "Value" means the amount of the full actual consideration therefor, paid or to be paid, including the amount of any lien or liens thereon.

(4) "Partial interest" means a percentage interest in property when less than one hundred percent (100%).

(5) "Person" means and includes an individual, corporation, partnership or other business organization, trust, fiduciary or agent or any other party presenting a document for recordation.

Section 4. There is a new R.C.M. section numbered 84-7304 that reads as follows:

84-7304. Report of transfers—change of ownership records. (1) All transfers of real property, which are not evidenced by a recorded document, except those transfers otherwise provided for in this act, shall be reported to the department of revenue or its agent on the form prescribed.

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(2) No agent of the department of revenue may change or be required to change any ownership records used for the assessment or taxation of real property, unless he has received a transfer certificate from the clerk and recorder or a transfer has been reported to him.

Section 5. There is a new R.C.M. section numbered 84-7305 that reads as follows:

84-7305. Certificate of county clerk and recorder. (1) The county clerk and recorder shall cause to be executed by the parties to the transaction or their agents or representatives a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) No instrument or deed evidencing a transfer of real estate may be accepted for recordation until the certificate provided in this act has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed as between the parties to it shall not be affected by the failure to comply with the provisions in this act.

(3) The form of certificate shall be prescribed by the state department of revenue and the department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

(4) The county clerk and recorder shall prepare a like certificate for each contract for deed filed for recording.

(5) The county clerk and recorder shall transmit each executed certificate to the state department of revenue.

Section 6. There is a new R.C.M. section numbered 84-7306 that reads as follows:

84-7306. Rules. The state department of revenue may prescribe such rules as are reasonably necessary to facilitate and expedite the provisions and administration of this act.

Section 7. There is a new R.C.M. section numbered 84-7307 that reads as follows:

84-7307. Certificate—exceptions. The certificate imposed by this act shall not apply:

(1) to an instrument recorded prior to the effective date of this act;

(2) to the sale of agricultural land when the land is used for agricultural purposes;

(3) to the United States of America, this state, or any instrumentality, agency, or subdivision thereof;

(4) to an instrument which (without added consideration) confirms, corrects, modifies or supplements a previously recorded instrument;

(5) to a transfer pursuant to court decree;

(6) to a transfer pursuant to mergers, consolidations or reorganizations of corporations, partnerships, or other business entities;

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(7) to a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;

(8) to a transfer of decedents' estates;

(9) to a transfer of a gift;

(10) to a transfer between husband and wife, or parent and child with only nominal actual consideration therefor;

(11) to an instrument the effect of which is to transfer the property to the same party or parties;

(12) to a sale for delinquent taxes or assessments, sheriff sale, bankruptcy action or mortgage foreclosure;

(13) to a transfer made in contemplation of death.

Section 8. There is a new R.C.M. section numbered 84-7308 that reads as follows:

84-7308. Disclosure of information. The certificate required by this act and the information therein shall not be a public record and shall be held confidential by the county clerk and recorder, county assessor, and department of revenue. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The foregoing provisions shall not apply to compilations from such certificates, or to summaries, analyses, and evaluations based upon such compilations.

Section 9. There is a new R.C.M. section numbered 84-7309 that reads as follows:

84-7309. Classification or assessment methods. (1) This act shall not change or modify the methods of classification or assessment of real estate as provided for in Title 84, R.C.M. 1947, or in any law of this state.

(2) The sale price of real estate shall not be the sole determinant of assessed value. The department shall consider, wherein the consideration is to be paid in deferred installments over a period of ten (10) years or more, the terms of the contract, amount of down payment, amount of each installment, rate of interest, and other covenants or exceptional circumstances which may affect the consideration paid for real estate.

Section 10. Notwithstanding section 43-517, the duties, obligations, or responsibilities imposed on local government entities by this act are such that related costs are incurred as a part of their normal operating procedures.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. There is a new R.C.M. section numbered 84-7310 that reads as follows:

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84-7310. Penalty. A person convicted of violating any provision of this act shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months or both.

Approved May 1, 1975.

CHAPTER NO. 529

AN ACT AMENDING SECTIONS 69-5002, 69-5003, AND 69-5005, R.C.M. 1947, TO RE-DEFINE 'SUBDIVISION' TO INCLUDE ONLY PARCELS OF LESS THAN TWENTY (20) ACRES IN SIZE; PROVIDING FOR APPROVAL OF PLANS FOR FACILITIES IN SUBDIVISIONS; REQUIRING THE PAYMENT OF FEES FOR SERVICES RENDERED IN THE REVIEW OF PLATS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-5002, R.C.M. 1947, is amended to read as follows:

"**69-5002. Definitions.** As used in this chapter unless the context clearly indicates otherwise the following words or phrases shall have the following meanings:

(1) "Subdivision" means a division of land, or land so divided, which creates one (1) or more parcels containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and includes any resubdivision; and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes. A subdivision shall comprise only those parcels of less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels, whether contiguous or not; provided, however, condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this chapter are exempt from provisions of this chapter.

(2) "Board" means the board of health and environmental sciences.

(3) "Department" means department of health and environmental sciences.

(4) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter or building requiring facilities for the supply of water or the disposition of sewage or solid waste until the department has approved plans for those facilities.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste.

(6) "Solid wastes" means all putrescible and nonputrescible solid

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wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes."

Section 2. Section 69-5003, R.C.M. 1947, is amended to read as follows:

"**69-5003. Approval of plans for facilities in subdivisions.** (1) A person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision *until the department has indicated that the subdivision is subject to no sanitary restriction.*

(2) A county clerk and recorder may not accept a subdivision plat for filing until:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and

(b) the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction.

(3) When a subdivision as defined in this chapter is excluded from the provisions of Title 11, chapter 38, section 11-3862, R.C.M. 1947, except section 11-3862 (8), R.C.M. 1947, and the subdivision is otherwise subject to the provisions of this chapter, plans and specifications of the subdivisions shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) The developer shall present to the department a preliminary plan of the proposed development and whatever information the developer feels necessary for its subsequent review. Within sixty (60) days of this submission, based upon its receipt by the department, the department shall notify the developer if the material submitted is satisfactory to determine if sanitary restrictions are necessary and if not what additional information is required for subsequent action by the department.

(b) If additional information is necessary to determine if sanitary restrictions are necessary no further processing will be made on the request until the mission information is made available to the department by the developer.

(c) The department must notify the developer within thirty (30) days if his submission of additional requested material is satisfactory. If the material is not satisfactory, the provision of subsection (b) shall apply.

(d) After the department has notified the developer that they have all the necessary information required for review, the department must give final action of the proposed plan within sixty (60) days, unless an environmental impact statement is required, at which time this deadline may be increased to one hundred twenty (120) days.

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(4) A person may not construct or use any facilities which deviate from the plans and specifications filed with the department until the department has approved the deviation."

Section 3. Section 69-5005, R.C.M. 1947, is amended to read as follows:

"69-5005. Rules for administration and enforcement of chapter. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, *and setting forth fees, not to exceed fifteen dollars ($15) per parcel for services rendered in the review of plats and subdivisions* necessary for administration and enforcement of this chapter.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area,

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(e) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(f) standards and technical procedures applicable to water systems;

(g) standards and technical procedures applicable to solid waste disposal;

(h) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat;

(i) a schedule of fees to be paid by the applicant for plat or subdivision

review to the department for deposit in the agency fund provided for in section 79-410. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(i) number of lots in the subdivision;

(ii) the type of water system to serve the development;

(iii) the type of sewage disposal to serve the development; and

(iv) the degree of environmental research necessary to supplement the review procedure."

Section 4. This act is effective on its passage and approval.

Approved May 1, 1975.

CHAPTER NO. 530

AN ACT TO AMEND SECTION 10-1234, R.C.M. 1947, TO INCREASE THE SALARY OF PROBATION OFFICERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1234, R.C.M. 1947, is amended to read as follows:

"**10-1234. Probation officers — powers — duties — qualifications.** (1) The youth division judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this act. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers shall approximate those required for probation officers in so far as possible. A chief probation officer shall be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this act. No person while serving as a law enforcement officer shall be appointed or perform the duties of a full-time or part-time probation officer.

(2) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences or;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences, and at least one (1) year's experience in work of a nature related to the duties of a probation officer as set forth in subsection (4) of this section; or

(c) a bachelor's degree in any field and at least three (3) years' experience in work related to the duties of a probation officer as set forth in subsection (4) of this section.

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(d) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer; provided, preference shall be given to persons with the qualifications set forth in subsection (2) above.

(4) A probation officer shall:

(a) perform the duties set out in section 10-1210;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(5) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

(6) A chief probation officer shall receive for his services a sum specified by the court; however, the judge may employ him on a yearly salary, not to *be less than twelve thousand five hundred dollars ($12,500) nor more than sixteen thousand dollars ($16,000) depending on the formal training and experience of each respective officer.* The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one (1) county whereby such county shall pay the entire salary.

The judge having jurisdiction of juvenile matters may also appoint such additional persons giving preference to persons having the qualifications suggested for appointment as the chief probation officer to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge, provided that such salaries shall not exceed ninety percent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed for actual expenses incurred."

Section 2. Notwithstanding the provisions of section 34 of chapter 329 of the session laws of Montana of 1974, it is the intent of the legislature that the maximum salary for youth court probation officers from July 1, 1974, until the effective date of this act be governed by section 1 of chapter 241 of the session laws of 1974 providing for a maximum annual salary of twelve thousand five hundred dollars ($12,500) per annum or forty-five dollars ($45) per diem. Youth court probation officers shall not be required to repay amounts in excess of the limit set by chapter 329 received as compensation for services rendered during that period if the amount was less than the limit set by chapter 241.

Approved May 1, 1975.

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CHAPTER NO. 531

AN ACT AMENDING SECTION 41-701, R.C.M. 1947; PROVIDING FOR PROCEDURES FOR COMPLIANCE WITH SECTION 41-701, PROVIDING PROCEDURES TO INSURE PAYMENT OF STANDARD PREVAILING RATES OF WAGES UNDER PUBLIC WORKS CONTRACTS; PROVIDING FOR PUBLIC POSTING OF A STATEMENT OF WAGES; AND PROVIDING PENALTIES FOR NONPAYMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-701, R.C.M. 1947, is amended to read as follows:

"**41-701. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.** In all contracts hereafter let for state, county, municipal, school, heavy highway or municipal construction, services, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. "Standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, applicable to the county or locality in which the work is being performed," means those wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification or type of *worker* needed to complete a contract under this act. When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification or type of *worker* needed to complete the contract. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States. All public works contracts under this act shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district or special improvement district body or officer prior to execution by the contracting public officer

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or officers. Whenever the employer is not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages.

(1) The Montana commissioner of labor may determine the standard prevailing rate of wages in the county or locality in which the contract is to be performed. The commissioner shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascertained.

(2) Contractors, subcontractors, and employers who are performing work or providing services under public works contracts as provided in this act shall post in a prominent and accessible site on the project or work area, not later than the first day of work, a legible statement of all wages to be paid to the employees employed on such site or work area.

(3) Any contractor, subcontractor or employer who shall pay workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the contracting agency the sum of twenty-five dollars ($25) a day for each worker so underpaid. Whenever it shall appear to the contracting agency or to the Montana commissioner of labor that there are insufficient monies due to the contractor or the employer under the terms of the contract to cover such penalties, the Montana commissioner of labor may within ninety (90) days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all such penalties and forfeitures due. Nothing in this section shall prevent the individual worker who has been underpaid from maintaining an action for recovery of the wages due under the contract as provided in chapter 13 of this Title.

(4) The provisions of this act do not apply in those instances where the standard prevailing rate of wages is determined pursuant to federal law.

(5) In no instances where this act is applicable shall the standard prevailing rate of wage be determined to be greater than the applicable rate of wage in the area for the particular work in question as negotiated under existing and current collective bargaining agreements."

Section 2. This act is effective on its passage and approval.

Approved May 1, 1975.

CHAPTER NO. 532

AN ACT TO INCREASE TRAVEL ALLOWANCE OF AUTHORIZED PERSONS USING PRIVATE PLANES; AMENDING SECTIONS 59-801 AND 59-802, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-801, R.C.M. 1947, is amended to read as follows:

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"**59-801. Mileage of all officers.** (1) *Automobiles:* Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles in the performance of official duties, *are* entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

(2) Where the individual is authorized to operate a privately owned vehicle even though a state owned vehicle is available, a rate of nine cents (9¢) per mile shall be paid.

(3) Where a privately owned vehicle is used because a state owned or leased vehicle is not available for use or it is in the best interest of the state that a privately owned vehicle be used, twelve cents (12¢) per mile shall be paid.

(4) Private plane: Members of the legislature, state officers, township officers, jurors, witnesses, county agents and all other persons, except sheriffs, who may be entitled to mileage, when using their own airplanes, in the performance of official duties, are entitled to collect mileage for the distance actually traveled at a rate of twenty cents (20¢) per statute mile, and no more unless specifically provided by law. This section does not affect the validity of section 43-310."

Section 2. Section 59-802, R.C.M. 1947, is amended to read as follows:

"**59-802. Mileage of all officers — liability of approving board for exceeding authorized amount.** Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive twelve cents (12¢) per *statute* mile for each mile necessarily traveled by automobile and *twenty cents (20¢)* per *statute* mile by private plane, and no more unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310. It is necessary for an individual to use his own vehicle where it has been determined that a state vehicle is not available for use or that it is in the best interest of the state that a privately owned vehicle be used."

Approved May 1, 1975.

CHAPTER NO. 533

AN ACT RELATING TO THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM OF THE STATE, PROVIDING THE METHOD OF ACCOUNTING FOR FUNDS APPROPRIATED FOR THE PROGRAM, PROVIDING FOR THE CREATION OF STATE DEBT BY THE ISSU-

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ANCE OF BONDS IN ANTICIPATION OF THE RECEIPT OF SUCH FUNDS, SUPPORTED BY THE PLEDGE OF THE FULL FAITH AND CREDIT OF THE STATE, PROVIDING FOR MAKING RENEWABLE RESOURCE DEVELOPMENT LOANS AND GRANTS, AND APPROPRIATING COAL TAX REVENUES AND GENERAL FUND MONEY FOR THESE PURPOSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 89-3601 that reads as follows:

89-3601. Policy. In the development of the natural resources of the state it is essential to distinguish between those which are and those which are not renewable; to make proper charges through taxation and otherwise for the depreciation of nonrenewable resources; and to invest a proper proportion of the tax and other revenues from nonrenewable resources in the replacement thereof with developments of renewable natural resources that will preserve for the citizens the benefit of the state's natural heritage and to ensure that the quality of existing public resources such as land, air, water, fish, wildlife and recreational opportunities are not significantly diminished by developments supported by this act. In order to finance such developments it is necessary to borrow in anticipation of the receipt of the revenues, so that replacement will not lag behind consumption. The purpose of this act is to provide a procedure for borrowing in the most economical way for this purpose, and to authorize the creation of debt to finance the first stage of the program, and to describe the types of projects, loans, and grants to be included in the program.

Section 2. There is a new R.C.M. section numbered 89-3602 that reads as follows:

89-3602. Definitions. Unless the context requires otherwise, in this act:

(1) "Renewable resource development program" means such developments in the public interest of renewable natural resources of the state as shall from time to time be acquired, constructed, and financed from funds appropriated to the accounts referred to in this section, and from the proceeds of bonds issued in anticipation of the receipt of these funds. Renewable resource developments shall, whenever practicable, be multiple use projects, and shall not significantly diminish the quality of existing public resources such as land, air, water, fish, wildlife and recreational opportunities.

(2) "Renewable resource development bonds" mean all series of bonds authorized by law to be issued pursuant to section 89-3606 to finance any part of the renewable resource development program, or to refund any such bonds.

(3) "Renewable resource development account", or "clearance fund account", mean a separate account which is created within the bond and

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insurance clearance fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the renewable resource development program, upon order of the department of administration or the board of natural resources and conservation under authority and within limitations provided by law.

(4) "Renewable resource development bond account", or "sinking fund account", mean a separate account which is created within the sinking fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only as provided for herein.

(5) "Treasurer" means the state treasurer.

Section 3. There is a new R.C.M. section numbered 89-3603 that reads as follows:

89-3603. Renewable resource development loans. (1) The board of natural resources and conservation is authorized upon proper application and upon recommendation of the department of natural resources and conservation to make loans from the renewable resource development account established by this act to farmers and ranchers of the state of Montana who, without regard to their form of business organization:

(a) are citizens of the United States and are citizens and residents of the state of Montana;

(b) have sufficient farming or ranching training and experience which, in the opinion of the department, is sufficient to assure the likelihood of the success of the proposed operations; and

(c) are or will become owner-operators of farms or ranches.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The board may make the renewable resource development loans provided for by this section for any worthwhile project for the conservation, management, utilization, development, or preservation of the land, water, fish, wildlife, recreational, and other renewable resources in the state; and for the refinancing of existing indebtedness incurred in the expansion or rehabilitation of projects for those purposes.

(4) The board shall make no renewable resource development loan which exceeds the lesser of one hundred thousand dollars ($100,000), or eighty percent (80%) of the fair market value of the security given therefor. In determining the fair market value for the security given for any loan, the department shall consider appraisals made by qualified appraisers and such other factors it considers important.

(5) The period for repayment of loans pursuant to this act may not exceed thirty (30) years.

(6) The board shall from time to time establish by rule the interest

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rate at which loans may be made under this act, provided that in no case may the rate be greater than one (1) percentage point greater than the prevailing interest rate on the renewable resource development bonds provided for in this act.

(7) The state shall have a lien upon a project constructed with money from the renewable resource development account for the amount of the loan, together with the interest thereon. This lien may attach to all project facilities, equipment, easements, real property and property of any kind of nature owned by the debtor, including all water rights. The board shall file either a financing statement or a real estate mortgage covering the loan, its amount, terms and a description of the project with the county recorder of each county in which the project or any part thereof is located. The county recorder shall record the lien in a book kept for the recording of liens and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(8) The board may adopt rules as required to govern the terms and conditions for making loans, security instruments, and agreements pursuant to this act.

(9) No member, officer, attorney, or other employee of the board or the department shall, directly or indirectly, be the beneficiary of or receive any fee, commission, gift, or other consideration for or in connection with any transaction or business under this act other than such salary, fee, or other compensation as he may receive as such member, officer, attorney, or employee. Any person violating any provision of this section shall, upon conviction thereof be punished by a fine of not more than two thousand dollars ($2,000) or imprisonment for not more than two (2) years or both.

(10) The department shall administer the loans made by the board pursuant to this act, and may accept and utilize voluntary and uncompensated services, and, with the consent of the agency concerned, utilize the officers, employees, equipment, and information of any agency of the federal government, or of any agency of Montana government, or of any political subdivision within Montana.

Section 4. There is a new R.C.M. section numbered 89-3604 that reads as follows:

89-3604. State renewable resource development grants. (1) The department of administration may recommend to the governor that grants from the renewable resource development account provided for by this act be made to any department, agency, board, commission, or other division of state government. Unless specifically authorized by the legislature, no bond proceeds shall be used for the purpose of making grants; grants may only be made in such sums as may be deposited in the sinking fund account from the collection of the strip coal mines license tax payable under the provisions of section 84-1302 as provided in section 89-3607.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards,

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agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the twentieth day of any legislative session. Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development or preservation of the land, water, fish, wildlife, recreational and other renewable resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section.

Section 5. There is a new R.C.M. section numbered 89-3605 that reads as follows:

89-3605. State and local renewable resource development loans. (1) The department of administration may recommend to the governor that loans be made from the renewable resource development account established by this act to any department, agency, board, commission or other division of state government, or to any city, county, or other political subdivision or local government body of the state.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those loan proposals having his approval to the legislature by the twentieth day of any legislative session. Those loan proposals approved by the legislature shall be administered by the department.

(4) The provisions of section 89-3603, subsection (2) and subsections (4) through (9) shall govern and apply to the local renewable resource loans herein provided for.

(5) Both the loans provided for by this section and the grants provided for by section 89-3604 may be submitted to the governor and approved by the legislature as may be necessary to jointly finance any project.

Section 6. There is a new R.C.M. section numbered 89-3606 that reads as follows:

89-3606. Renewable resource development bonds. (1) Within the limits authorized by section 89-3609, and within the further limitations in this section, the state board of examiners may issue and sell bonds of the state in such manner as it considers necessary and proper to finance the renewable resource development program. The full faith and credit

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and taxing powers of the state shall be pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of such bonds shall be issued by the state board of examiners upon request of the department of administration or the board of natural resources and conservation, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such time or times not exceeding thirty (30) years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the sinking fund account will in the judgment of the board be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects the state board of examiners is authorized to prescribe the form and terms of the bonds, and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the state board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder, other than refunding bonds, shall be deposited in the clearance fund account, except that any principal and accrued interest received in repayment of the loans provided for in this act shall be deposited in the sinking fund account. All proceeds of refunding bonds shall be deposited in the sinking fund account and applied to the payment and redemption of outstanding bonds issued hereunder as directed by the board, whether at maturity or on any previous date on which they may be prepaid according to their terms.

(6) The state board of examiners is authorized to issue refunding bonds at such times and in such amounts, if any, as may be necessary to pay principal or interest due which cannot be paid from funds then on hand in the sinking fund account. It may also issue refunding bonds to refund

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outstanding bonds before maturity, for the purpose of extending the maturities thereof so far as determined by the board to be necessary to assure that the funds then pledged to the sinking fund account will be sufficient for payment of principal and interest due in subsequent years. It may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable thereon.

(7) No refunding bonds may be issued and sold more than three (3) months before all bonds refunded thereby mature or are called for redemption unless the proceeds thereof, with any other funds in the sinking fund account which are needed and available for the purpose, or securities purchased from such proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(8) No new debt may be created by the issuance of refunding bonds in accordance with this section, but such refunding bonds shall evidence the debt previously created and shall be secured by the pledge of the full faith and credit and taxing powers of the state and by the further provisions of this act in the same manner as the bonds refunded thereby.

Section 7. There is a new R.C.M. section numbered 89-3607 that reads as follows:

89-3607. Sinking fund account. (1) The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the sinking fund account any tax, charge, fee, rental or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the sinking fund account, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that account, and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the sinking fund account shall be used first to pay interest, principal and redemption premiums when due and payable with respect to renewable resource development bonds; second to accumulate a reserve for the further security of such payments, to the amount required each month to meet those payments due within twelve (12) months thereafter; and third to restore the reserve to this amount after each payment.

(3) After the reserve provided for in subsection (2) above is in the sinking fund, money at any time received in the sinking fund in excess of that amount shall be transferred by the treasurer to the clearance fund account. If the balance at any time on hand in the sinking fund is not

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sufficient for compliance with subsection (2), and is not restored to the required amount within three (3) months thereafter, from funds specifically pledged and appropriated to the sinking fund account, the treasurer shall transfer thereto from the general fund an amount sufficient to restore the required balance.

(4) The state pledges and appropriates and directs to be credited to the sinking fund account as received two and one-half percent (2 ½%) of all money from time to time received from the collection of the strip coal mines license tax payable under the provisions of section 84-1302, or the equivalent provision of any severance tax enacted in lieu of such license tax, and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in subsection (2) above; provided that no more than two and one-half percent (2 ½%) of such tax collections shall be deemed to be pledged for the purpose of section 89-3606, subsection (3).

Section 8. There is a new R.C.M. section numbered 89-3608 that reads as follows:

89-3608. Clearance fund account. (1) In addition to any funds herein provided for the clearance fund account, the state may by enactment of the legislature or the people levy, impose, assess and pledge and appropriate to the clearance fund account any tax, charge, fee, rental or other income from any source.

(2) The state pledges and appropriates and directs to be credited from the general fund to the clearance fund account three hundred ninety thousand, nine hundred seventy-four dollars ($390,974) for its initial funding to be used and administered as provided for in this act. When sufficient funds have been accumulated in the clearance fund account from bond proceeds or as otherwise provided for in this act, the legislature directs that three hundred ninety thousand, nine hundred seventy-four dollars ($390,974) be appropriated from the clearance fund account and credited to the general fund.

(3) The costs of the board of examiners, the board of natural resources and conservation, the department of natural resources and conservation, and the department of administration incurred in the administration of this act shall be met from the clearance fund account monies which shall from time to time as needed be transferred to an earmarked revenue fund established for that purpose.

(4) The board of examiners, the department of natural resources and the department of administration may, within the limits of appropriation made therefore, make necessary expenditures for the purchase or hire of such personnel, facilities, and services as they may from time to time find necessary for the proper administration of this act.

(5) The general fund appropriation provided for by subsection (2) of this section as the initial funding for the programs provided for by this act shall be appropriated and used as follows for the biennium ending June 30, 1977:

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	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Administrative expenses from the earmarked revenue fund	$103,490	$102,534
DEPARTMENT OF ADMINISTRATION		
Administrative expenses from the earmarked fund	30,000	30,950
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Engineering studies on expanded water storage on the Tongue River from the clearance fund account	49,000	
Engineering studies on water storage on the Powder River from the clearance fund account	25,000	
Study of the diversion of water into the Milk River from the clearance fund account	50,000	

(6) The monies deposited in the clearance fund account as provided for in section 6 of this act shall be appropriated and used as follows for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
Department of Natural Resources and Conservation		
Implementation of the renewable resource development loan program authorized by section 3 of this act from the clearance fund account	1,000,000	2,000,000

(7) In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment submitted through the budget director by the governor, or his designated representative.

Section 9. There is a new R.C.M. section numbered 89-3609 that reads as follows:

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89-3609. Authorization of bonds. The legislature, through the enactment of this law by a two-thirds (⅔) vote of the members of each house, authorizes the creation of state debt in an amount not to exceed five million dollars ($5,000,000), and the issuance and sale of renewable resource development bonds in this amount, for the purpose of providing funds appropriated to the clearance fund account for developments included in the renewable resource development program.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 1, 1975.

CHAPTER NO. 534

AN ACT RELATING TO INTEREST PAID IN EMINENT DOMAIN PROCEEDINGS; AMENDING SECTION 93-9913, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-9913, R.C.M. 1947, is amended to read as follows:

"**93-9913. The date with respect to which compensation shall be assessed.** For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in value of property not actually taken, but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of highways under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw *interest at the rate of ten percent (10%) per annum* from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b)

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of this section *until the full amount is withdrawn from the court.* None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation."

Approved May 1, 1975.

CHAPTER NO. 535

AN ACT TO GENERALLY REVISE CERTAIN STATUTES WHICH DISCRIMINATE ON THE BASIS OF SEX IN ORDER TO REMOVE THE DISCRIMINATION; AMENDING SECTIONS 11-802, 11-1821, 11-1911, 11-1915, 11-1927, 11-1928, 11-2025, 11-3112, 11-3215, 16-2702, 17-504, 17-807, 23-4727, 23-4728, 35-409, 39-108, 39-109, 39-113, 40-3312, 40-4902, 40-5305, 41-1119, 41-1506, 45-511, 45-603, 45-808, 59-519, 63-107, 63-402, 64-209, 67-903, 67-904, 67-1603, 71-120, 71-2202, 72-617, 72-618, 75-8701, 77-501, 80-1801, 80-1803, 84-301, 84-3206, 91-1304, 92-707, 92-1303, 92-1321, 93-2803, 93-2804, 93-2807, 93-2808, 93-2809, 93-4207, 93-4707, 93-5834, 93-5836, 93-6711, 93-9706, 93-100-2, 95-609, R.C.M. 1947; AND CREATING A NEW SECTION 12-216, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-802, R.C.M. 1947, is amended to read as follows:

"**11-802. Powers of mayor.** The mayor is the chief executive officer of the city or town, and has power:

1. To nominate, and, with the consent of the council, to appoint all nonelective officers of the city or town, provided for by the council, except as provided in this title.

2. To suspend, and, with the consent of the council, to remove any nonelective officer, stating in the suspension or removal the cause thereof.

3. To cause the ordinances of the city or town to be executed, and to supervise the discharge of official duty by all subordinate officers.

4. To communicate to the council, at the beginning of every session, and oftener if deemed necessary, a statement of the affairs of the city or town, with such recommendations as *the mayor* may deem proper.

5. To recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town, and the improvement of the government and finances, as *the mayor* deems expedient.

6. To approve all ordinances and resolutions of the council adopted by

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it, and, in case the same do not meet *the mayor's* approbation, to return the same to the next regular meeting of the council, with *all* objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

7. To veto any objectionable part of a resolution or ordinance, and approve the other parts. If the mayor fail to return any resolution or ordinance as aforesaid, the same takes effect without further action.

8. To call special meetings of the council, and when so called *the mayor* must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

9. To cause to be presented, once in three months, a full and complete statement of the financial condition of the city or town.

10. To bid in for the city or town any property sold at a tax or judicial sale, where the city or town is a party or interested.

11. To procure and have in *the mayor's* custody the seal of the city or town.

12. To take and administer oaths.

13. To call on every citizen of the city or town, over the age of eighteen years, to aid in the enforcement of the laws and ordinances in case of riots; to call out the militia to aid *the mayor* in suppressing the same or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or for carrying into effect any law or ordinance; and any person who does not obey such call forfeits to the city or town a fine not exceeding twenty-five dollars.

14. To require of any of the officers of a city or town an exhibit of *such officer's* books and papers.

15. To grant pardons and remit fines and forfeitures for offenses against city or town ordinances, when in *the mayor's* judgment public justice would be thereby subserved; but *the mayor* must report all pardons granted, with the reasons therefor, to the next council.

16. To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

17. *To exercise* such power as may be vested in *the mayor* by ordinance of the city or town, in and over all places within five miles of the boundaries of the city or town, for the purpose of enforcing the health and quarantine ordinances and regulations thereof."

Section 2. Section 11-1821, R.C.M. 1947, is amended to read as follows:

"**11-1821. Payment of police reserves.** (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of the police officers of any city or town to the reserve list of the city or town, *such person* shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to one-half the base

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salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service; provided that after completing twenty (20) years or more of active service if a policeman or officer elects to serve an additional one (1) to ten (10) years then the payment from the police reserves fund shall be increased at the rate of one per cent (1%) per year of additional service up to a maximum of sixty per cent (60%) of the last year's average salary received as a monthly compensation for services as an active member of the police department.

(2) Upon the death of any policeman or any officer on the active list or reserve list of any city or town, *the* surviving dependent *of the policeman or officer*, shall, as long as *such spouse does not remarry*, be paid, from the police reserves' fund, a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave *the decedent* was receiving as an active officer computed on the highest salary received in any one month during the last year of active service prior to the date of *death* or prior to the date the policeman or officer passes to the police reserve list. No surviving *spouse* shall be entitled to payments under the provisions of this act *who is* fifteen (15) years younger than *the deceased spouse*, unless *he* shall have been married to and living with *the deceased spouse* for ten (10) years immediately preceding his death. If the policeman or officer leaves a dependent minor child, or dependent minor children, then upon the death of the policeman or officer, providing *there is* no surviving *spouse*, or upon the death or remarriage of *the surviving spouse*, or if *the surviving spouse* be fifteen (15) years younger than *the decedent* and shall not have been married to and living with *the decedent* for the ten (10) years immediately preceding his death, then his surviving dependent minor child, or dependent children, collectively, if there be more than one (1) dependent minor child, shall be paid the same monthly payments as are herein provided to be paid to the surviving *spouse*, until the minor child, or minor children, reach the age of eighteen (18) years or shall have married; provided further that the payments herein provided for to be made to the beneficiaries shall not be made if the payments require an increase in the millage tax levy provided by section 11-1823, R.C.M. 1947.

(3) Payments as herein provided for, to be made to the minor child or children of police officers shall be paid to the duly appointed, qualified and acting guardian of the child or children, for the use of the minor, until the minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor child, upon each child reaching the age of eighteen (18) years the prorata payments to the child shall cease and shall be made to the remaining minor child or children until the youngest child reaches the age of eighteen (18) years or is married.

(4) The term "policeman," or "police officer," includes all those on the reserve list, as well as "active police," "police officer," and "patrolman," or any of those terms.

(5) Before any payments are made to any member of the police reserve, the governing body of the city shall, forthwith, determine the eligibility

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of such member for payments and the amount thereof in accordance with the terms of this section."

Section 3. Section 11-1911, R.C.M. 1947, is amended to read as follows:

"**11-1911. Source of fund.** The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments or donations given or paid to such fund, or any of its members, except as otherwise designated by the donor, and a monthly fee which shall be paid into the fund by each paid member and part-paid member of said fire department relief association amounting to six per cent (6%) of *the member's* regular monthly salary, the proceeds of a tax levy as provided by section 11-1912, R.C.M. 1947, and all moneys received from the state of Montana as provided for by section 11-1919, R.C.M. 1947, and the interest of any portion of such fund.

Any such paid or part-paid fireman shall be entitled to a return, in lump sum, without interest, of all monthly contributions made by *the fireman* to such funds, within sixty (60) days of permanent separation from service in the fire department of such city, town or municipality, except *for* separation by reason of retirement, death or disability, which would otherwise qualify such separated fireman, *the surviving spouse* or orphans, to benefits or allowances from such fire department relief association."

Section 4. Section 11-1915, R.C.M. 1947, is amended to read as follows:

"**11-1915. Benefits, allowed for, how allowed, and how paid.** Every fire department relief association may allow to its members benefits for the following causes, as provided by law.

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

2. To a member who has become maimed or disabled for life in line of duty.

3. To a member who has suffered injury in line of duty.

4. To a member who has contracted sickness in line of duty.

5. Funeral expenses of a member.

6. Pensions to the *surviving spouse*, orphan or orphans of a deceased member.

All applications for relief shall be referred to the board of trustees. All claims shall be referred to the board of trustees for allowance or disallowance and claimant shall have the right to appeal to the association in the event *the* claim be disallowed. All claims shall be paid by warrant, duly authorized, drawn by the secretary, and countersigned by the president of the association, and on presentation thereof, the treasurer of the association shall pay the same out of the said pension and disability fund."

Section 5. Section 11-1927, R.C.M. 1947, is amended to read as follows:

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"**11-1927. Pensions to surviving spouses and orphans.** Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the *surviving spouse* or orphans of a deceased member of said association, who, on the date of *death*, was an active member of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to *death* had suffered a sickness or injury, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half (½) of the monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, last received by such deceased member for services *rendered* as an active member of the fire department in the city or town wherein such association has been formed. However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one per cent (1%) per year for each additional year of service completed, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of said fire department. However, the monthly compensation paid to a *surviving spouse* or orphan of an active member who becomes deceased after July 1, 1973, or an active member who elects to retire after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In no event shall the monthly compensation paid to a *surviving spouse* or orphan of an active member who became deceased prior to July 1, 1974 or an active member who elected to retire before July 1, 1974 be less than two hundred dollars ($200). Provided, that said pension shall be paid to the within named *surviving spouse* only so long as *such spouse* remains unmarried, and further provided, that a *surviving spouse* of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five ($75) dollars per month."

Section 6. Section 11-1928, R.C.M. 1947, is amended to read as follows:

"**11-1928. Use of disability and pension fund of fire department relief association.** Said fund shall not be used for any other purpose whatsoever, other than for the payment of the following:

1. A service pension to a member who, by reason of service, has become entitled to a service pension.

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2. A pension to a member who has become permanently maimed or disabled in line of duty.

3. A benefit or allowance to a member who has suffered a permanent disabling injury in line of duty.

4. A benefit or allowance to a member who has contracted a permanent disabling sickness in line of duty.

5. To defray the funeral expenses of a member, in an amount not to exceed, however, the sum of seven hundred fifty dollars ($750).

6. Payment to the *surviving spouse*, orphan or orphans of a deceased member as provided by law.

7. The payment of premiums upon a blanket policy of insurance covering the members of such fire department and providing for payment of compensation in case of death or injury to such member or any of them.

8. The return of employee contribution as provided by law.

9. All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association and on presentation thereof, the treasurer shall pay the same out of the said disability and pension fund."

Section 7. Section 11-2025, R.C.M. 1947, is amended to read as follows:

"**11-2025. Payment of claim — beneficiaries of decedent.** 1. Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for full participation hereunder, or in the event of the death after February 27, 1971, of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for partial participation hereunder, or in the event of the death of any such volunteer fireman after *qualifying* for full participation hereunder but before *receiving* payments hereunder totaling at least two thousand dollars ($2,000), or in the event of the death of any such volunteer fireman after February 27, 1971 and after he has qualified for partial participation hereunder but before he has received payments hereunder totaling a proportion of two thousand dollars ($2,000) determined under the formula set forth in section 11-2023 (2)(A)(II); and if such deceased volunteer fireman shall have left a *surviving spouse*, then

such full or partial participation pension shall be paid or continue to be paid to *the surviving spouse* by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of *the surviving spouse*, until *such spouse's* death or remarriage; or if said deceased volunteer fireman shall have left no *surviving spouse* but shall have left a child or children under the age of eighteen (18) years, then such full or partial participation pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for *a surviving spouse* or children, then such pension shall terminate, and no further payments shall be made hereunder, in the case of a full participation pension when a total of two thousand dollars ($2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death, or in the case of a partial participation pension, when a total of a proportion of two thousand dollars ($2,000) determined under the formula set forth in section 11-2023 (2)(A)(II) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death. If such deceased volunteer fireman shall leave neither *surviving spouse* nor child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs."

Section 8. Section 11-3112, R.C.M. 1947, is amended to read as follows:

"**11-3112. Nomination of candidates — primary election.** (1) Candidates to be voted for at all general municipal elections at which a mayor or councilmen are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those selected in the manner hereinafter prescribed. The primary election for such nominations shall be held on the second Monday preceding the municipal election. The judges of election appointed for the municipal election shall be the judges of the primary election, and it shall be held at the same places, as far as possible, and the polls shall be opened and closed at the same hours, with the same clerks as are required for said general municipal election.

(2) Any qualified elector of said city who is the owner of any real estate situated therein, desiring to become a candidate for mayor or councilman, shall, at least ten days prior to said primary election, file with the city clerk a statement of such candidacy in substantially the following form:

State of Montana,)
) ss.
County of .....)

I, ..., being first duly sworn, say that I reside at .... street, city of ...., county of .... state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of (mayor or councilman) to be voted upon at the primary election to be held on the .... Monday of ...., 19.., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) ....

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Subscribed and sworn to (or affirmed) before me by .... on this .... day of ...., 19...

(Signed) ....

and shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition accompanying nominating statement.

The undersigned, duly qualified electors of the city of ...., and residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed in the ballot as a candidate for nomination for (name of office) at the primary election to be held in such city on the .... Monday of ...., 19... We further state that we know him/*her* to be a qualified elector of said city and a *person* of good moral character, and qualified, in our judgment, for the duties of such office.

Names of qualifying electors. Number. Street.

.....

.....

(4) Each signer of a nomination paper shall sign but one such nomination paper for the same office, except where more than one officer is to be elected to the same office, in which case he may sign as many nomination papers as there are officers to be elected, and only one candidate shall be petitioned for or nominated in the same nomination paper.

(5) Immediately upon the expiration of the time of filing the statements and petitions for candidates, the said city clerk shall cause to be published for three consecutive days in all the daily newspapers published in the city, in proper form, the names of the persons as they are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspapers that may be published in said city; and the said clerk shall thereupon cause the primary ballots to be printed, authenticated with a facsimile of his signature. Upon the said ballot the names of the candidates for mayor, arranged alphabetically, shall first be placed, with a square at the left of each name, and immediately below the words, "Vote for one." Following these names, likewise arranged in alphabetical order, shall appear the names of the candidates for councilmen, with a square at the left of each name, and below the names of such candidates shall appear the words, "Vote for (giving the number of persons to be voted for)." The ballot shall be printed upon plain substantial, white paper, and shall be headed:

Candidates for nomination for mayor and councilmen of the city of .... at the

Primary Election;

but shall have no party designation or mark whatever. The ballots shall be in substantially the following form: (Place a cross in the square preceding the names of the parties you favor as candidates for the respective positions).

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Official Primary Ballot.

Candidates for nomination for mayor and councilmen of the city of .... at the

Primary Election.
For Mayor.
(Name of candidate.)
(Vote for one.)
For councilman.
(Name of candidate.)

Vote for .... (Giving number to be voted for).

Official ballot attest:

(Signature)....
City Clerk.

(6) Having caused said ballots to be printed, the said city clerk shall cause to be delivered at each polling place a number of said ballots equal to twice the number of such voters registered in such polling place at the last general municipal election. The persons who are qualified to vote at the general election shall be qualified to vote at such primary election and any person offering to vote may be orally challenged by any elector of the city upon any or all of the grounds set forth and specified in section 23-1220 of these codes, and the provisions of sections 23-1221 to 23-1228, inclusive, of these codes shall apply to all challenges made at such election. Judges of election shall immediately upon the closing of the polls count the ballots and ascertain the number of votes cast in such precinct for each of the candidates for mayor and councilman, and make return thereof to the city clerk upon the proper blanks to be furnished by the city clerk within six hours of the closing of the polls. On the day following the primary election the city clerk shall canvass said returns so received from all the polling precincts, and shall make and publish in all the newspapers in said city, at least once, the result thereof. Said canvass by the city clerk shall be publicly made.

(7) If a mayor is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for mayor. If one councilman is to be elected at such municipal election, the two persons receiving the highest number of votes shall be the candidates for councilmen. If two councilmen are to be elected at such general municipal election, the four persons receiving the highest number of votes shall be the candidates for councilmen, and if three councilmen are to be elected at such municipal election, the six persons receiving the highest number of votes shall be the candidates for councilmen, and if four councilmen are to be elected at such general municipal election, the eight persons receiving the highest number of votes shall be candidates for councilmen at such general election, and these shall be the only candidates for mayor and councilmen at such general election.

(8) All electors of cities under this act, who, by ordinances governing cities incorporated under the general municipal incorporation law, or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities, shall be qualified to vote at all elections under this act; and the ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable, and in all elections in such cities the election precincts,

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voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as by law provided for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this act.

(9) Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and file with the city clerk *an* oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of *the* office, which bond shall be approved by the judge of the district court of the county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated."

Section 9. Section 11-3215, R.C.M. 1947, is amended to read as follows:

"**11-3215. Nomination of candidates — primary election.** (1) Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) Any qualified elector of the municipality, who is the owner of real estate situated therein to the value of not less than one thousand dollars, desiring to become a candidate for commissioner, shall, at least thirty-five (35) days prior to said primary election, file with the clerk of the commission a statement of such candidacy in substantially the following form:

State of Montana,
County of ....

I,...., being first duly sworn, say that I reside at .... street, (city or town) of ...., county of ...., state of Montana; that I am a qualified voter therein; that I am a candidate for nomination to the office of commissioner to be voted upon at the primary election to be held on the last Tuesday of August, 19.., and I hereby request that my name be printed upon the official primary ballot for nomination by such primary election for such office.

(Signed) ....

Subscribed and sworn to (or affirmed) before me by .... on this .... day of ...., 19..

(Signed) ....

And shall at the same time file therewith the petition of at least twenty-five qualified voters requesting such candidacy. Each petition shall be verified by one or more persons as to qualifications and residence, with street number, of each of the persons so signing the said petition, and the said petition shall be in substantially the following form:

(3) Petition Accompanying Nominating Statement.

The undersigned duly qualified electors of the (city, town) of...., and

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residing at the places set opposite our respective names hereto, do hereby request that the name of (name of candidate) be placed on the ballot as a candidate for nomination to the office of commissioner at the primary election to be held on the last Tuesday of August, 19... We further state that we know him/*her* to be a qualified elector of said (city, town), and a *person* of good moral character, and qualified, in our judgment, for the duties of such office, and we individually certify that we have not signed similar petitions greater in number than the number of commissioners to be chosen at the next general municipal election.

Names of Qualifying Electors Number Street

(Space for Signatures.)

State of Montana,
County of ....

...., being duly sworn, deposes and says, that he knows the qualifications and residence of each of the persons signing the appended petition, and that such signatures are genuine, and the signatures of the persons whose names they purport to be.

(Signed) ....

Subscribed and sworn to before me this .... day of ...., 19...

.... (Notary Public),

This petition, if found insufficient, shall be returned to .... at No. .... street, ..., Montana.

(4) Immediately upon the expiration of the time of filing the statements and petition for candidates, the clerk of the commission shall cause to be published for three consecutive days in all the daily newspapers published in the municipality in proper form, the names of the persons that are to appear upon the primary ballots, and if there be no daily newspaper, then in two issues of any other newspaper that may be published in said municipality, and the said clerk shall thereupon cause the primary ballots to be printed and authenticated with a facsimile of his signature.

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot."

Section 10. Section 16-2702, R.C.M. 1947, is amended to read as follows:

"**16-2702. Duties of sheriff.** The sheriff must:

1. Preserve the peace;

2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or have committed a public offense;

3. Prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

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4. Perform duties of humane officer within *the* county with reference to the protection of dumb animals;

5. Attend all courts, except justices and police courts, at their respective terms or sessions held within *the* county, and obey their lawful orders and directions;

6. Command the aid of as many inhabitants of his county as may *be* necessary in the execution of these duties;

7. Take charge of and keep the county jail and the prisoners therein;

8. Endorse upon all notices and process the year, month, day, hour, and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception;

9. Serve all process or notices in the manner prescribed by law;

10. Certify *in writing* upon the process of notices the manner and time of service, or, if he fails to make service, the reasons of *this* failure, and return the same without delay."

Section 11. Section 17-504, R.C.M. 1947, is amended to read as follows:

"**17-504. Injuries inflicted in a duel — support of family of injured person.** If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the *spouse* of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court."

Section 12. Section 17-807, R.C.M. 1947, is amended to read as follows:

"**17-807. What cannot be specifically enforced.** The following obligations cannot be specifically enforced:

1. An obligation to render personal service, or to employ another therein;

2. An agreement to marry or live with another;

3. An agreement to submit a controversy to arbitration;

4. An agreement to perform an act which the party has not power to perform lawfully when required to do so;

5. An agreement to procure the act or consent of the *spouse* of the contracting party, or of any other third person; or

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable."

Section 13. Section 23-4727, R.C.M. 1947, is amended to read as follows:

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"**23-4727. Expenditure by or for candidate for office.** No sums of money shall be paid, and no expenses authorized or incurred, by or on behalf of any candidate to be paid by *such candidate*, except such as *may be paid* to the state for printing, as herein provided, in *a* campaign for nomination to any public office or position in this state, in excess of fifteen per cent of one year's compensation or salary of the office for which *the person* is a candidate; provided, that no candidate shall be restricted to less than one hundred dollars in *a* campaign for such nomination. No sums of money shall be paid, and no expenses authorized or incurred, contrary to the provisions of this act, for or on behalf of any candidate for nomination. For the purposes of this law, the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, *spouse*, partner, employer, employee, or fellow official or fellow employee of a corporation shall be deemed to be that of the candidate."

Section 14. Section 23-4728, R.C.M. 1947, is amended to read as follows:

"**23-4728. Limitation of expenditures by candidate — by party organizations — by relatives.** No sums of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate who has received the nomination to any public office or position in this state, except such as *the candidate* may contribute towards payment for *the* political party's or independent statement in the pamphlet herein provided for, to be paid by *such candidate* in his campaign for election, in excess of ten per cent of one year's salary or compensation of the office for which *the candidate* is nominated; provided, that no candidate shall be restricted to less than one hundred dollars. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any political party or organization to promote the success of the principles or candidates of such party or organization, contrary to the provisions of this act. For the purposes of this act, the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, *spouse*, partner, employer, employee, or fellow official or fellow employee of a corporation, shall be deemed to be that of the candidate."

Section 15. Section 35-409, R.C.M. 1947, is amended to read as follows:

"**35-409. Definitions.** The following terms, whenever used or referred to in this act, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) "Local agency" means any county, city, town, school district, or housing authority of the state.

(2) "Housing" means any temporary war or veterans' housing acquired from the United States of America under the terms and provisions of the Housing Act of 1950, being Title II, Chapter 94, Public Law 475, of the laws of the Eighty-first Congress, Second Session, for the purpose of providing temporary housing for veterans and for families of servicemen, located within the boundaries of any local agency.

(3) "Veterans" includes, in so far as permitted by federal law, any

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person who has served in the military or naval forces of the United States and has been discharged or released therefrom under conditions other than dishonorable.

(4) "Families of servicemen" includes, in so far as permitted by federal law, the families of any person who is serving in the military or naval forces of the United States, and the unmarried *surviving spouse* of a deceased veteran.

(5) "Families" is limited to the spouse and legal dependents who are members of the household."

Section 16. Section 39-108, R.C.M. 1947, is amended to read as follows:

"**39-108. Acknowledgment by married persons.** The acknowledgment of a married *person* to an instrument purporting to be executed by *such person* must be taken the same as that of any other person."

Section 17. Section 39-109, R.C.M. 1947, is amended to read as follows:

"**39-109. Conveyance by married person — acknowledgment.** A conveyance by a married *person* has the same effect as if *such person* were unmarried, and may be acknowledged in the same manner."

Section 18. Section 39-113, R.C.M. 1947, is amended to read as follows:

"**39-113. Form of certificate of acknowledgment by married person.** The certificate of acknowledgment by a married *person* must be substantially in the form prescribed in section 39-111."

Section 19. Section 40-3312, R.C.M. 1947, is amended to read as follows:

"**40-3312. Application for license.** (1) Application for an agent or solicitor license shall be made to the commissioner by the applicant, and be signed and sworn to by the applicant before a notary public or other person authorized by law to take acknowledgments of deeds.

(2) The commissioner shall designate and prepare forms for application for license which shall require full answers to such questions as may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, purpose for which the license is to be used and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) If for an agent's license, the application shall state the kinds of insurance proposed to be transacted, and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) If for a solicitor's license, the application shall be accompanied by written appointment of applicant as solicitor by a licensed agent, subject to issuance of the license.

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(5) If the applicant for an agent license is a firm or corporation, the application shall show, in addition, the names of all members, officers and directors, and shall designate each individual who is to exercise the powers to be conferred by the license upon the firm or corporation. Each such individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to section 40-3311, the application shall show the names and residence addresses of the association's officers and trustees.

(7) If for license as either agent or solicitor, the application shall also show whether applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any such license was ever refused, suspended or revoked; whether any insurer, general agent or agent (in the case of a solicitor application) claims applicant to be indebted to it, and if so the details thereof and the defenses, if any, of the applicant thereto; whether applicant ever had an agency contract canceled, and the facts thereof; and if applicant is married, like information with respect to *the applicant's spouse.*

(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented (in the case of applicants for license as agent), or of the proposed employing agent (in the case of applicants for license as solicitor) as to whether the applicant is known to *such officer or representative,* whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on such investigation, as to applicant's trustworthiness and competence and whether the applicant will use the license principally for the purpose of insuring *the applicant's* own risks or interests and those of *the applicant's* relatives or employer.

(9) All such applications shall be accompanied by the applicable license fee, appointment of agent fee where applicable, examination fee where required under section 40-3313, all in the respective amounts stated in section 40-2726 (fees and licenses)."

Section 20. Section 40-4902, R.C.M. 1947, is amended to read as follows:

"40-4902. "Benevolent association" defined. (1) Any corporation, association or society, or by whatever name called, which issues any certificate, policy, membership agreement, or makes any promise or agreement with its members, whereby, upon decease of a member, any money or other benefit, charity, aid or relief is to be paid, provided or rendered by such corporation, association or society to his legal representatives, or to the beneficiary designated by him, which money, benefit, charity, aid or relief is derived from voluntary donations, or from admission fees, dues or assessments, or any of them collected or to be collected from the members thereof, or members of a class therein, or interest or accretions thereon, or accumulations thereof; and wherein the money or other benefit, charity, aid or relief, so realized, is applied to or accumulated for the uses and purposes herein specified, and/or the uses of such corporation,

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association or society, and/or the expenses of management and prosecution of its business, shall be deemed to be a "benevolent association" for the purposes of this chapter.

(2) The definition of benevolent association in subsection (1) above is not applicable to:

(a) Burial or death benefits, annuities, endowments or any other benefit payments of any legal reserve life or disability insurer, or of any labor union, railroad brotherhood, or lodge having as a primary business the improvement of working conditions; or

(b) Any auxiliaries to any labor union, railroad brotherhood or lodge referred to in subdivision (a) above; or

(c) The benevolent plans within fraternal orders if limited to members and if the plan is not the principal object for the formation or continuance of the fraternal order."

Section 21. Section 40-5305, R.C.M. 1947, is amended to read as follows:

"**40-5305. Exempted societies.** (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

(b) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, and the auxiliaries to such orders, societies or associations;

(c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars ($400) or disability benefits of not more than three hundred fifty dollars ($350) to any person in any one year, or both; or

(d) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars ($400) or for disability benefits of not more than three hundred fifty dollars ($350) to any one person in any one year, or both.

(2) Any such society or association described in clauses (c) or (d), above, which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in paragraph (d) which has more than one thousand (1,000) members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

(3) No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in paragraph (b), above, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

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(4) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(5) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this chapter.

(6) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state."

Section 22. Section 41-1119, R.C.M. 1947, is amended to read as follows:

"**41-1119. Seats for employees.** Every employer in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any *person*, shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment."

Section 23. Section 41-1506, R.C.M. 1947, is amended to read as follows:

"**41-1506. Spouse must join in assignment of wages — acknowledgment.** No assignments of wages or salary to a wage broker by a married *person*, who shall have a *spouse* residing in this state, shall be valid or enforceable without the consent of *such spouse*, evidenced by *the spouse's* signature to said assignment, executed and acknowledged before a notary public or other officer empowered to take acknowledgments, and no wage broker or person connected with *a wage broker*, directly or indirectly, shall be authorized to take any such acknowledgments."

Section 24. Section 45-511, R.C.M. 1947, is amended to read as follows:

"**45-511. Who deemed owners.** Every person, including guardians of minors, married *persons*, and any company, association, or corporation not tenants or lessees, for whose use, benefit, or enjoyment any property, building, structure, or improvement mentioned in this chapter is constructed, repaired, or altered, is deemed the owner thereof for the purposes of this chapter."

Section 25. Section 45-603, R.C.M. 1947, is amended to read as follows:

"**45-603. Priority of wages in case of death of employer.** In case of the death of any employer, the wages of each miner, mechanic, *salesperson*, clerk, servant, and laborer for services rendered within four (4) months next preceding the death of the employer, in the amount actually owed, rank in priority next after the funeral expenses, expenses of

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the last sickness, the charges and expenses of administering upon the estate, and the allowance to the *surviving spouse* and infant children, and must be paid before other claims against the estate of the deceased person."

Section 26. Section 45-808, R.C.M. 1947, is amended to read as follows:

"**45-808. Owner defined.** Every person, including guardians or minors, married *persons*, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are threshed, or the services rendered or labor performed, is deemed the owner thereof for the purposes herein mentioned."

Section 27. Section 59-519, R.C.M. 1947, is amended to read as follows:

"**59-519. Appointment of relative to office of trust or emolument unlawful.** It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree, or by affinity within the second degree; except that the provisions of this section shall not apply to sheriffs in the appointment of *persons* as cooks and/or *attendants*. It shall further be unlawful for any person or any member of any board, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree."

Section 28. Section 63-107, R.C.M. 1947, is amended to read as follows:

"**63-107. Rules for determining the existence of a partnership.** In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 63-208 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that *such person* is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

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(a) As a debt by installments or otherwise,

(b) As wages of an employee or rent to a landlord,

(c) As an annuity to a *surviving spouse* or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of a good will of a business or other property by installments or otherwise."

Section 29. Section 63-402, R.C.M. 1947, is amended to read as follows:

"**63-402. Nature of a partner's right in specific partnership property.** (1) A partner is co-owner with *the other* partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with *the other* partners to possess specific partnership property for partnership purposes, but has no right to possess such property for any other purpose without the consent of *the other* partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner, *that partner's* right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, *in which case such deceased partner's* right in such property vests in *the deceased's* legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) *Provided the proceeds of a deceased partner's interest are included in the assets of the decedent's estate such* property is not subject to *a lien of the surviving spouse for his or her elective share, or a lien for,* or allowances to *surviving spouses*, heirs, or next of kin."

Section 30. Section 64-209, R.C.M. 1947, is amended to read as follows:

"**64-209. Protection of personal relations.** The rights of personal relations forbid:

1. The abduction of a parent from *a* child;

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2. The abduction or enticement of a wife from her husband *or a husband from his wife*, of a child from a parent or from a guardian entitled to its custody, or of a servant from *a* master;

3. The seduction of a *spouse, child*, orphan, or servant;

4. Any injury to a servant which affects *the servant's* ability to serve *the* master."

Section 31. Section 67-903, R.C.M. 1947, is amended to read as follows:

"**67-903. Married persons.** A married *person* may execute a power during marriage, without the concurrence of *the spouse*, unless otherwise prescribed by the terms of the power."

Section 32. Section 67-904, R.C.M. 1947, is amended to read as follows:

"**67-904. Married persons.** No power can be executed by a married woman before she attains her majority *which could not be executed by a married man before he attains his majority.*

Section 33. Section 67-1603, R.C.M. 1947, is amended to read as follows:

"**67-1603. Grant by married person — how acknowledged.** No estate in the real property of a married *person* passes by any grant purporting to be executed or acknowledged by *such person*, unless the grant or instrument is acknowledged by *the grantor* in the manner prescribed by sections 39-108 and 39-113."

Section 34. Section 71-120, R.C.M. 1947, is amended to read as follows:

"**71-120. Burial of deceased military service men and women.** (1) It shall be the duty of the board of commissioners of each county in this state to designate some proper person in the county, who shall be known as veterans' burial supervisor, preferably an honorably discharged service man or woman, whose duty it shall be to cause to be decently interred the body of any honorably discharged service man or woman, who shall have served in any branch of the armed services of the United States and who may hereafter die or any service man or woman who died while in service during any declared or undeclared war, or resident of the Montana veterans' home, who may hereafter die. Such burial shall not be made in any burial grounds or cemetery, or in any portion of any burial grounds or cemetery, used exclusively for the burial of pauper dead.

(2) The expense of burial shall be two hundred fifty dollars ($250), to be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death.

(3) The benefits hereof shall not be available in the case of any decedent whose executor, administrator or heirs waive the benefits.

(4) That the expense of each burial of a resident of the Montana veterans' home, shall not exceed the sum of two hundred fifty dollars ($250),

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to be paid by the county commissioners of the county in which the deceased person resided prior to admittance to the Montana veterans' home.

(5) In the event any such honorably discharged person, male or female, who shall have served in the armed services of the United States, and who is a resident of the state of Montana, shall die while temporarily absent from the state or county of residence, then the provisions of this act shall apply, and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided.

(6) Whenever any such honorably discharged person, male or female hereinbefore described shall die at any public institution of the state of Montana, other than the state veterans' home, and burial for any cause shall not be made in the county of the former residence of the deceased, the officers of said state institution, as aforesaid, shall provide the proper burial herein prescribed except that the expense of each burial shall not exceed the sum herein allowed, which expense shall be paid by the county in which the decedent resided at the time of entry into such institution, but no such burial shall be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment."

Section 35. Section 72-617, R.C.M. 1947, is amended to read as follows:

"**72-617. Persons to whom free transportation may be issued.** The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following, to wit: (a) The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers; (b) to the families of the persons included in subdivision "a" hereof; (c) the general officers of any such common carriers; (d) employees of sleeping car and express car companies, and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys *and newsgirls* on trains, baggage agents; (e) persons injured in wrecks, and physicians and nurses attending such persons; (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation; (g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations; (h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes; (j) superannuated and pensioned employees, and members of their families and *surviving spouse* of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (l) policemen and firemen of any city, wearing the insignia of their office within the limits of such city; (m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations *and Young Women's Christian Associations*, inmates of hospitals and charitable and eleemosynary institutions, and persons

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exclusively engaged in charitable and eleemosynary work; (n) indigent, destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents, employees in such transportation; (o) school children to and from public or parochial schools; (p) the railroad commission of Montana; (q) the state fire marshal; (r) the state scale expert, and their necessary employees, while traveling on official duty.

The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city, where a condition of a franchise grant requires the furnishing of transportation to policemen, firemen, and officers while in the performance of official duties. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that this act shall not be construed to modify or repeal the provisions of section 72-618."

Section 36. Section 72-618, R.C.M. 1947, is amended to read as follows:

"**72-618. Additional free transportation authorized.** That common carriers of passengers in this state authorized by section 72-617, to issue free transportation to certain classes of persons may also issue free transportation to their furloughed employees and members of their families, to persons who have become disabled or infirm in the service of a common carrier, to members of families of persons who have become disabled or infirm in the service of any such common carrier, to families of persons killed, and *surviving spouses who have not remarried* and minor children during minority, of persons who died while in the service of any such common carrier, to witnesses attending any legal investigation in which such carrier is interested, for the remains of persons who died while in the employment of a common carrier, and to ex-employees traveling for the purpose of entering the service of any such common carrier; provided that the provisions hereof shall not be construed to prohibit or make unlawful the interchange of passes for the persons to whom free transportation may be furnished under this section."

Section 37. Section 75-8701, R.C.M. 1947, is amended to read as follows:

"**75-8701. Qualification of students.** The university system is open to all people subject to such uniform regulations as the regents deem proper. All able-bodied students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state."

Section 38. Section 77-501, R.C.M. 1947, is amended to read as follows:

"**77-501. Purpose of act — definitions — preference.** The purpose of this act is to provide for preference of veterans, their unremarried *surviving spouses*, and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

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(1) Definitions.

(a) The term "veterans" as herein used, means men and women who served in the armed forces of the United States, and who have been separated from such service upon conditions other than dishonorable, in time of war or declared national emergency as follows: the Civil War; the Spanish American War; the Philippine Insurrection; World War I, between April 6, 1917, and November 11, 1918, both dates inclusive; World War II, which term means such service between September 16, 1940, and December 31, 1946, both dates inclusive; the Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and those honorably discharged veterans who have served on active military duty for more than one hundred eighty (180) days after January 31, 1955, or who were discharged or released because of a service-connected disability, including, but not limited to, those veterans serving because of the Vietnam Conflict.

(b) The term "*surviving spouse*" as herein used means unremarried *surviving spouses* of veterans.

(c) The word "per centum" means per centum of the total aggregate points of the examination hereinafter referred to.

(2) Preference to appointment and employment.

In every public department and upon all public works of the state of Montana and of any county or city thereof, the following shall be preferred for appointment and employment: veterans, their *spouses and surviving spouses*, and the other dependents of disabled veterans; disabled civilians recommended by the state rehabilitation bureau;

Provided that age, loss of limb, or other physical impairment which does not in fact incapacitate, shall not be deemed to disqualify any disabled veteran or any such disabled civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved;

Provided further that those of the above described veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of said wars or military expeditions or police action, where such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans.

(3) Credit for examinations.

When written or oral examinations are required for employment as above described, disabled veterans and their *spouses*, their unremarried *surviving spouses*, and other dependents of disabled veterans, shall have added to their examination ratings a credit of ten points, and all other veterans, their *spouses*, unremarried *surviving spouses*, and dependents shall have added to their examination ratings a credit of five points; provided that the fact that an applicant has claimed a veterans' credit shall not be made known to the examiners until ratings of all applicants have been recorded; after which such credits shall be added to the examination rating and the records shall show the examination rating and the

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veteran's credit; provided further that the benefits of this subsection are in addition to and not in derogation of the preference in appointment and/or employment given by subsection (2) hereof.

(4) Eligibility.

That none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached, or to take up arms in the defense of the United States; provided, however, that no person, not a citizen of the United States, shall be employed by any state, city or county officer in any capacity if competent American labor is available; and provided, further, that no person who has not been a resident of Montana for at least one (1) year immediately preceding an appointment shall be entitled to such preference; provided, further, that for city or county employment, no preference will be granted unless applicant under this act is also a resident of the city or town or county in which employment is sought.

(5) Enforcement of preference.

That any person entitled to preference in this section who has applied for any appointment or employment upon public works of the state of Montana or of any county and city thereof, or in any public department of said state and who has been denied said employment or appointment and feels that the spirit of this act has been violated and that *such person* is in fact qualified physically, mentally and possesses business capacity, competency and education to discharge the duties of the position applied for, shall have the right to petition by verified petition the district court of the state of Montana in the county in which the work is to be performed, setting forth the facts of *the* application, qualifications, competency and *such person's* honorable discharge or other qualifications warranting *the applicant* to preference under this act, and upon filing of such petition any judge in said court shall forthwith issue an order to show cause to the appointing authority directing said appointing authority to appear in said court at a specified time and place, not less than five (5) nor more than ten (10) days after the filing of said verified petition, to show cause, if any *exists*, why said veteran or person entitled to preference should not be employed by *such appointing authority* and that said district court shall have jurisdiction upon the proper showings to issue its order directing and ordering said appointing authority to comply with this law in giving the preference herein provided."

Section 39. Section 71-2202, R.C.M. 1947, is amended to read as follows:

"**71-2202. Duty of board.** The board shall establish a state-wide service for discharged veterans and their families; actively *cooperate* with state and federal agencies having to do with the affairs of veterans and their families; and promote the general welfare of all veterans and their families. Employees of the board must be residents of this state. *Whenever possible all* employees of the board shall have served in the military forces of the United States during World War I, World War II, the Korean War, or the Vietnam Conflict, and shall have been honorably discharged therefrom; preference for employment shall be given to disabled veterans."

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Section 40. Section 80-1801, R.C.M. 1947, is amended to read as follows:

"**80-1801. Location and function of home — persons admitted.** The institution at Columbia Falls is the "Montana Veterans' Home" and, as its primary function, provides home and subsistence for honorably discharged veterans. The department may also admit *spouses or surviving spouses* of honorably discharged veterans to the home if space allows."

Section 41. Section 80-1803, R.C.M. 1947, is amended to read as follows:

"**80-1803. Eligibility for residence in home.** To be eligible for residence in the Montana veterans' home under the regulations prescribed by the state department of institutions a person shall

(1) Be an honorably discharged veteran, or the *spouse or surviving spouse* of a veteran, who served in the armed forces of the United States.

(2) Be an invalid and have become unable to earn a livelihood as a result of the disability.

(3) Have resided in Montana for a period of two years immediately prior to making application for admittance.

(4) Not have been convicted of a felony or of a crime involving moral turpitude.

(5) Not be an alcoholic or have a record of habitual inebriation."

Section 42. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclu-

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sively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the *surviving spouse* remains unmarried

and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower *sixty-two (62)* years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow *or widower* with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to income, if applicable, as to

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retirement benefits, if applicable, or, as to marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. All property not included in the eight (8) preceding classes."

Section 43. Section 84-3206, R.C.M. 1947, is amended to read as follows:

"**84-3206. Laundries.** Every person engaged in laundry business, other than the steam-laundry business, shall pay a license of ten dollars per quarter; provided, that this act shall not apply to *persons* engaged in *a* laundry business where not more than two *persons* are engaged or employed or kept at work, and said license shall be for one place of business only."

Section 44. Section 91-1304, R.C.M. 1947, is amended to read as follows:

"**91-1304. Authority of unmarried person not extinguished by marriage — appointment of married person.** When an unmarried *person* appointed *personal representative* marries, *such person's* authority is not extinguished. When a married *person* is named as *personal representative, such person* may be appointed and serve in every respect as an unmarried *person*."

Section 45. Section 92-707, R.C.M. 1947, is amended to read as follows:

"**92-707. Compensation from what date paid.** When an injured employee has no *spouse*, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of *the employee's* death, no compensation shall be allowed or paid during the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues one (1) week, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of *the employee's* death, no compensation shall be paid for the first week of any injury, but if disability continues one (1) week, compensation shall be paid from the date of injury; provided, that separate benefits of medical and hospital services shall be furnished from date of injury."

Section 46. Section 92-1303, R.C.M. 1947, is amended to read as follows:

"**92-1303. Definitions.** Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the Workmen's Compensation Act shall apply to terms and words herein contained.

1. "Weekly wage" means the average of the weekly earnings of the

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employee in the employ of *an* employer against whom compensation is awarded during the period of one year prior to the termination of *the* employment with such employer, or during such lesser period in such year as *the employee* has been in the employ of his employer. In case the employee is absent from employment during the period as a result of the occupational disease for which compensation is claimed, then the week or weeks in which the absence occurs shall not be included in the computation of the average weekly wage. If the period provided in this section for computation of the average weekly wage does not include four weeks, then the average weekly wage shall be such as, having regard to the previous wage of the employee, or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the weekly earning capacity of the disabled employee in the employment in which *the employee* is working at the time of his disablement.

2. "Award" means the finding or decision of the board as to the amount of compensation due any disabled employee or the dependents of any deceased employee.

3. "Board" means the industrial accident board of the state of Montana.

4. "Compensation" means the payments and benefits provided in this act.

5. "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." Provided that in the event of death or disability due to pneumoconiosis the following shall apply:

a. If a miner who is suffering or has suffered from pneumoconiosis was employed for ten (10) years or more in one (1) or more coal mines there shall be a rebuttable presumption that *the* pneumoconiosis arose out of such employment.

b. If a deceased miner was employed for ten (10) years or more in one (1) or more coal mines and died from a respirable disease there shall be a rebuttable presumption that *the* death was due to pneumoconiosis.

c. If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one (1) or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (3) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in the manner prescribed in clause (1) or (2) then there shall be an irrebuttable presump-

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tion that *such miner* is totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, as the case may be.

6. The terms "employee," "workman," and "operative," as used herein, shall mean:

Every person in the service of the state, and of a county, city, town, municipal corporation, or school district, including the regular members of lawfully constituted police and fire departments of cities and towns.

Every person in the service of any employer subject to this act as hereinafter defined or to whom such employer is required to secure compensation under this act, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of trade, business, or occupation of the employer, and not including agricultural workers and domestic servants unless the employer shall so elect.

7. "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years, or if no surviving wife or husband then a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of disablement.

8. "Major dependent" means if there be no beneficiary as defined in a preceding section, the father or mother, or the survivor of them, if actually dependent upon the decedent at the time of *the decedent's* disablement, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

9. "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding section the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of *the decedent's* disablement. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

10. "Invalid" means one who is physically or mentally incapacitated.

11. "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the disablement, an illegitimate child legitimized prior to the disablement.

12. "Week" means six (6) working days, but includes Sundays.

13. "Wages" means the average daily wages received by the employee at the time of the disablement for the usual hours of employment in a day, and overtime is not to be considered.

14. "Wife" or "widow" means only a wife or widow living with, or

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legally entitled to be supported by the deceased at the time of the disablement.

15. "Husband" or "widower" means only a husband or widower living with, or legally entitled to be supported by the deceased at the time of her disablement.

16. "Commissioner" means one (1) of the members of the industrial accident board.

17. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.

18. "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the board, or any other determination arrived at or decision made by such board, excepting general or local orders as herein specified.

19. "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve (12) times the average monthly payroll for the current year; provided, that an estimate may be made by the board for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the board, as the case may actually be on December 31st of such current year.

20. "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth (30th) day of the succeeding June.

21. "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

22. "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

23. The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice *that* profession in this state.

24. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.

25. Wherever the masculine gender is used, the feminine and neuter shall be included.

26. For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic X-ray pattern, and by variable clinical manifestations.

a. For the purpose of this act "pneumoconiosis" is defined as a chronic dust disease of the lung arising out of employment in coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

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27. "Workshift" means the work for which an employee is paid a day's wages.

28. "Workmen's Compensation Act" means the Workmen's Compensation Act of the state of Montana."

Section 47. Section 92-1321, R.C.M. 1947, is amended to read as follows:

"**92-1321. Compensation benefits payable under this act.** The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease, or *the* beneficiaries and dependents *of the employee* in the case of death caused by an occupational disease, shall be entitled to under this act shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time, as is provided in cases of temporary total disability, permanent total disability and in cases of injuries causing death under the Workmen's Compensation Act of the state of Montana. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this act, be made as follows:

a. In the case of total disability of a miner due to pneumoconiosis the disabled miner shall be paid benefits during the disability at the rate of one hundred fifty-five dollars ($155) per month.

b. In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to *the miner's surviving spouse* (if any) at the rate the deceased miner would receive such benefits if totally disabled.

c. In the case of an individual entitled to benefit payments under clause a. or b. who has one or more dependents, the benefit payments shall be increased at the rate of fifty per centum (50%) of such benefit payments, if such individual has one (1) dependent, seventy-five per centum (75%) if such individual has two (2) dependents, and one hundred per centum (100%) if such individual has three (3) or more dependents."

Section 48. Section 93-2803, R.C.M. 1947, is amended to read as follows:

"**93-2803. When a married person is a party — actions by and against.** A married *person* may sue and be sued in the same manner as if *such person* were sole."

Section 49. Section 93-2804, R.C.M. 1947, is amended to read as follows:

"**93-2804. Spouse may defend, when.** If a husband and wife be sued together, *each spouse* may defend for *his or* her own right, and if the *other spouse* neglect to defend, *the spouse who does choose to defend* may defend for *the other spouse's* right also."

Section 50. Section 93-2807, R.C.M. 1947, is amended to read as follows:

"**93-2807. Unmarried person may sue for seduction.** An unmarried

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person may prosecute, as plaintiff, an action for *his or* her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in *such person's* favor."

Section 51. Section 93-2808, R.C.M. 1947, is amended to read as follows:

"**93-2808. Parent or guardian may sue for seduction of child or ward.** *Either parent* may prosecute as plaintiff for the seduction of the *child*, and the guardian for the seduction of the ward, though the *child* or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service."

Section 52. Section 93-2809, R.C.M. 1947, is amended to read as follows:

"**93-2809. Parent or guardian may sue for injury or death of child or ward.** *Either parent* may maintain an action for the injury or death of a minor child, and a guardian for injury or death of *a* ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person who is responsible for his conduct, also against such other person."

Section 53. Section 93-4207, R.C.M. 1947, is amended to read as follows:

"**93-4207. Security upon injunction.** On granting an injunction or restraining order, the court or judge may require, except when the state, a county, or any subdivision thereof, or municipal corporation, or a married *person* in a suit for divorce against *his or* her *spouse*, is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties, to the effect that the plaintiff will pay to the party enjoined such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If *the plaintiff* fails to do so, *such plaintiff* is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two nor more than five days, must justify before a judge or clerk in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved."

Section 54. Section 93-4707, R.C.M. 1947, is amended to read as follows:

"**93-4707. Judgment for or against married person.** Judgment for or against a married *person* may be rendered and enforced as if *such person* were single."

Section 55. Section 93-5834, R.C.M. 1947, is amended to read as follows:

"**93-5834. Real property sold — how redeemed — who are**

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redemptioners. Property sold subject to redemption, as provided by the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, *the judgment debtor's spouse*, or his successor in interest, in the whole or any part of the property, and if the judgment debtor or successor be a corporation, then by a stockholder thereof;

2. A creditor having a lien by judgment, mortgage, or attachment on the property sold, or on some share or part thereof, subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem. The persons mentioned in the second division of this section are, in this chapter, termed "redemptioners.""

Section 56. Section 93-5836, R.C.M. 1947, is amended to read as follows:

"93-5836. Redemptioners' rights — manner of redeeming — when purchaser entitled to deed — certificate of redemption — redemption by stockholders — redeeming from spouse. (1) If property be so redeemed by a redemptioner, another redemptioner may, within sixty (60) days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption, with interest thereon at the rate of one-half of one per cent (½%) per month in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and, in addition, the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with interest thereon at the rate of one-half of one per cent (½%) per month, and the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him, with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) Written notice of redemption must be given to the sheriff, and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner, or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk; and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien. If no redemption be made within one year after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty (60) days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of one year from the date of the sale to redeem the property. If the judgment debtor or *the judgment debtor's spouse* redeem, *the judg-*

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ment debtor or *the spouse* must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and *the debtor* is restored to his *own* estate. If the *spouse* redeem, *such spouse* shall become the owner of *the debtor spouse's* interest, subject to any liens thereon at the time of the execution sale. Upon a redemption by a debtor, or *the debtor's spouse*, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

(3) If a stockholder of a corporation redeems, the corporation, within one (1) year after the date of sale, may redeem by paying to the redemptioner, or the sheriff for his benefit, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent (½%) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon. When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption, and within sixty (60) days after the expiration of one (1) year from the date of sale, contribute to the redemption by paying to the redeeming stockholder, or depositing with the sheriff for his benefit, a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate of one-half of one per cent (½%) per month, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon, and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed, and shall succeed to the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit, setting forth the number of shares of stock owned by him, and to the best of his knowledge, the number of shares of stock of the corporation outstanding.

(4) If the *spouse* of a judgment debtor redeem, the *judgment debtor*, within one year after the date of sale, may redeem by paying the *spouse* or *the spouse's* successors in interest or the sheriff for *the* benefit *of the spouse or the successors in interest of the spouse*, the amount paid to effect the redemption, with interest thereon at the rate of one-half of one per cent (½%) per month from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the *spouse* or *the* successors in interest *of the spouse*, with like interest thereon."

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Section 57. Section 93-6711, R.C.M. 1947, is amended to read as follows:

"**93-6711. Service of summons.** The summons may be served by a sheriff or constable of any of the counties of this state; provided, that when a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting justice of the peace at the date of the summons; or the summons may be served by any person resident in the state, eighteen (18) years *of age or older*, not a party to the suit, and must be served and returned as provided in Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9); or it may be served by publication, provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts; the word "justice" being substituted for the word "clerk" whenever the latter word occurs."

Section 58. Section 93-9706, R.C.M. 1947, is amended to read as follows:

"**93-9706. Parties defendant.** No person other than the tenant of the premises, and subtenant if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in the proceeding, nor shall any proceeding abate, nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, is guilty of the offense charged, judgment must be rendered against *such party.* In case a defendant has become a subtenant of the premises in controversy, after the service of the notice provided for by part 2 of section 93-9703, upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action. In case a married *person is* a tenant or subtenant, *failure to join such person's spouse* shall constitute no defense; but in case *the spouse is* not joined, an execution issued upon a personal judgment against *the tenant or subtenant* can only be enforced against property on the premises at the commencement of the action or against property *that is owned solely by the tenant or subtenant and not by his spouse.* All persons who enter the premises under the tenant, after the commencement of the action, shall be bound by the judgment, the same as if he or they had been made party to the action."

Section 59. Section 93-100-2, R.C.M. 1947, is amended to read as follows:

"**93-100-2. Application for change of name — how made.** All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under eighteen (18) years of age, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if *neither parent* of

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such person be living, name as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition, apply to the district court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be made as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association."

Section 60. Section 95-609, R.C.M. 1947, is amended to read as follows:

"**95-609. Assisting a peace officer.** (a) A peace officer making a lawful arrest may command the aid of persons eighteen (18) *years of age or older.*

(b) A person commanded to aid a peace officer shall have the same authority to arrest as that officer.

(c) A person commanded to aid a peace officer in making an arrest shall not be civilly liable for any reasonable conduct in aid of the officer."

Section 61. There is a new R.C.M. section numbered 12-216 that reads as follows:

12-216. "Man" and "men" to include women. Wherever the word man or men or a word which includes the syllable "man" or "men" in combination with other syllables, such as "workman" appears in this code, such word or syllable shall be deemed to include "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to the male sex only.

Approved May 6, 1975.

CHAPTER NO. 536

AN ACT TO REVISE THE MARRIAGE AND DISSOLUTION OF MARRIAGE LAWS OF THIS STATE BY ADOPTING THE PROVISIONS OF THE UNIFORM MARRIAGE AND DIVORCE ACT AS RECOMMENDED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTION 48-130, R.C.M. 1947; AND REPEALING SECTIONS 21-101 THROUGH 21-150, 48-101, 48-103 THROUGH 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 THROUGH 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 THROUGH

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48-203, 48-206, AND 48-207, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 48-301 that reads as follows:

48-301. Short title. This act may be cited as the "Uniform Marriage and Divorce Act".

Section 2. There is a new R.C.M. section numbered 48-302 that reads as follows:

48-302. Purposes of act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships;

(3) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(5) make reasonable provision for spouse and minor children during and after litigation; and

(6) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 3. There is a new R.C.M. section numbered 48-303 that reads as follows:

48-303. Uniformity of application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

Section 4. There is a new R.C.M. section numbered 48-304 that reads as follows:

48-304. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this act is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

Section 5. There is a new R.C.M. section numbered 48-305 that reads as follows:

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48-305. Form of application, license, certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the following information:

(a) name, sex, address, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

Section 6. There is a new R.C.M. section numbered 48-306 that reads as follows:

48-306. License to marry. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one (1) party has appeared before the clerk of the district court and paid the marriage license fee of fifteen dollars ($15), the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of eighteen (18) years at the time the marriage license is effective, or will have attained the age of sixteen (16) years and has obtained judicial approval as provided in section 48-308; and

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

Section 7. There is a new R.C.M. section numbered 48-307 that reads as follows:

48-307. Effective date of license. A license to marry becomes effective throughout this state three (3) days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

Section 8. There is a new R.C.M. section numbered 48-308 that reads as follows:

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48-308. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or has the consent of both parents, or of the parent having the actual care, custody, and control, to his marriage, if capable of giving consent, or of his guardian. The court may require both parties to participate in a reasonable period of marriage counseling with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

Section 9. There is a new R.C.M. section numbered 48-309 that reads as follows:

48-309. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

Section 10. There is a new R.C.M. section numbered 48-310 that reads as follows:

48-310. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

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(b) a marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

Section 11. There is a new R.C.M. section numbered 48-311 that reads as follows:

48-311. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity.

(c) a party was under the age of sixteen (16) years or was aged sixteen (16) or seventeen (17) years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsection (1)(a) through (c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress or fraud, no later than two (2) years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than four (4) years after the petitioner obtained knowledge of the described condition;

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(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one (1) of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

Section 12. There is a new R.C.M. section numbered 48-312 that reads as follows:

48-312. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (section 48-310) or declared invalid (section 48-311). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Section 13. There is a new R.C.M. section numbered 48-313 that reads as follows:

48-313. Application. All marriages contracted within this state prior to the effective date of this act, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicil of the parties, are valid in this state.

Section 14. There is a new R.C.M. section numbered 48-314 that reads as follows:

48-314. Validity of common law marriage. Common law marriages are not invalidated by this act. Declarations of marriage pursuant to sections 48-130 through 48-132 are not invalidated by this act.

Section 15. There is a new R.C.M. section numbered 48-315 that reads as follows:

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48-315. Application of the Montana rules of civil procedure to proceedings under this act. (1) The Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of _____ and _____". A custody or support proceeding shall be entitled "In re the (Custody) (Support) of _____".

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

Section 16. There is a new R.C.M. section numbered 48-316 that reads as follows:

48-316. Dissolution of marriage—legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state, or was stationed in this state while a member of the armed services, and that the domicil or military presence has been maintained for ninety (90) days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence

(i) that the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of section 48-319 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or provided for a separate, later hearing to complete these matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

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Section 17. There is a new R.C.M. section numbered 48-317 that reads as follows:

48-317. Procedure—commencement—pleadings—abolition of existing defenses. (1) All proceedings under this act are commenced in the manner provided by the Montana rules of civil procedure.

(2) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of section 48-316 exist and that the marriage is irretrieveably broken in that either

(i) the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and that there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(3) Either or both parties to the marriage may initiate the proceeding.

(4) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within twenty (20) days after the date of service file a verified response. No decree may be entered until twenty (20) days after the date of service.

(5) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(6) The court may join additional parties proper for the exercise of its authority to implement this act.

Section 18. There is a new R.C.M. section numbered 48-318 that reads as follows:

48-318. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance

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or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(4) A response may be filed within twenty (20) days after service of notice of motion or at the time specified in the temporary restraining order.

(5) On the basis of the showing made and in conformity with sections 48-322 and 48-323, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(6) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 48-330; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

Section 19. There is a new R.C.M. section numbered 48-319 that reads as follows:

48-319. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage

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is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of sections 36-201 through 36-205, known as the Montana Conciliation Law.

Section 20. There is a new R.C.M. section numbered 48-320 that reads as follows:

48-320. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, or

(b) if the separation agreement provides that its terms shall not be

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set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

Section 21. There is a new R.C.M. section numbered 48-321 that reads as follows:

48-321. Disposition of property. (1) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title thereto is in the name of the husband or wife or both. In making apportionment the court shall consider the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties, custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit. In disposing of property acquired prior to the marriage; property acquired by gift, bequest, devise or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including the non-monetary contribution of a homemaker; the extent to which such contributions have facilitated the maintenance of this property and whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

Section 22. There is a new R.C.M. section numbered 48-322 that reads as follows:

48-322. Maintenance. (1) In a proceeding for dissolution of marriage

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or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs, and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

Section 23. There is a new R.C.M. section numbered 48-323 that reads as follows:

48-323. Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child, and his educational needs; and

(5) the financial resources and needs of the noncustodial parent.

Section 24. There is a new R.C.M. section numbered 48-324 that reads as follows:

48-324. Representation of child. The court may appoint an attorney

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to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs shall be waived.

Section 25. There is a new R.C.M. section numbered 48-325 that reads as follows:

48-325. Payment of maintenance or support to court. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

Section 26. There is a new R.C.M. section numbered 48-326 that reads as follows:

48-326. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding one dollar ($1) as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Section 27. There is a new R.C.M. section numbered 48-327 that reads as follows:

48-327. Costs—attorney's fees. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Section 28. There is a new R.C.M. section numbered 48-328 that reads as follows:

48-328. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal

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from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than six (6) months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

Section 29. There is a new R.C.M. section numbered 48-329 that reads as follows:

48-329. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

Section 30. There is a new R.C.M. section numbered 48-330 that reads as follows:

48-330. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in subsection (6) of section 48-320, the provisions of any decree respecting maintenance or support may be modified by a court only as to installments accruing subsequent to the motion for modification and either:

(a) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(b) upon written consent of the parties. The provisions as to property disposition may not be revoked or modified by a court, except:

(i) upon written consent of the parties, or

(ii) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the

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death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Section 31. There is a new R.C.M. section numbered 48-331 that reads as follows:

48-331. Jurisdiction—commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

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(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

Section 32. There is a new R.C.M. section numbered 48-332 that reads as follows:

48-332. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved.

Section 33. There is a new R.C.M. section numbered 48-333 that reads as follows:

48-333. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in section 48-340. The court may award temporary custody under the standards of section 48-332 after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under subsection (a)(ii) or (b) of section 48-331 is dismissed, any temporary custody order is vacated.

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Section 34. There is a new R.C.M. section numbered 48-334 that reads as follows:

48-334. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

Section 35. There is a new R.C.M. section numbered 48-335 that reads as follows:

48-335. Investigations and reports. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare department.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen (16) unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

Section 36. There is a new R.C.M. section numbered 48-336 that reads as follows:

48-336. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

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(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

Section 37. There is a new R.C.M. section numbered 48-337 that reads as follows:

48-337. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

Section 38. There is a new R.C.M. section numbered 48-338 that reads as follows:

48-338. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the county welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

Section 39. There is a new R.C.M. section numbered 48-339 that reads as follows:

48-339. Modification. (1) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(2) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that

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were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(3) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

Section 40. There is a new R.C.M. section numbered 48-340 that reads as follows:

48-340. Affidavit practice. A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

Section 41. There is a new R.C.M. section numbered 48-341 that reads as follows:

48-341. Application. (1) This act applies to all proceedings commenced on or after its effective date.

(2) This act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

Section 42. **Act supersedes other laws or regulations.** If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control,

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and such other law, rule, or regulation shall be deemed superseded for the purpose of this act.

Section 43. **Severability.** If any provision of this act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Section 44. Section 48-130, R.C.M. 1947, is amended to read as follows:

"**48-130. Declaration of marriage without solemnization—how made.** Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in section *48-309* must prior to executing the declaration, secure the premarital test certificate required by *this act*, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. Any such declaration of marriage shall substantially contain the following:

1. The names, ages, and residences of the parties;

2. The fact of marriage;

3. Name of father *and* maiden name of mother of both parties, and address of each;

4. That both parties are legally competent to enter into the marriage contract.

Such declaration must be subscribed by the parties and attested by at least two (2) witnesses, and formally acknowledged before the clerk of the district court of said county."

Section 45. Sections 21-101 through 21-150, 48-101, 48-103 through 48-105, 48-111, 48-115, 48-116, 48-118.1, 48-119, 48-120, 48-122, 48-125, 48-127 through 48-129, 48-133, 48-142, 48-143, 48-145, 48-149, 48-150, 48-201 through 48-203, 48-206, and 48-207, R.C.M. 1947, are repealed.

Section 46. This act is effective January 1, 1976.

Approved May 6, 1975.

CHAPTER NO. 537

AN ACT CREATING THE OFFICE OF WORKERS' COMPENSATION JUDGE; PROVIDING FOR ITS ADMINISTRATION AND JURISDICTION; AND REPEALING SECTIONS 92-812, 92-813, 92-815 THROUGH 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 THROUGH 92-836, 92-1347, 92-1350, 92-1351, 92-1353 THROUGH 92-1355, 92-1357, 92-1359 THROUGH 92-1365 AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. There is a new R.C.M. section numbered 82A-1016 that reads as follows:

82A-1016. Creation of office of workers' compensation judge —allocation. (1) There is created the office of workers' compensation judge. The office is allocated to the department of administration for administrative purposes only as prescribed in section 82A-108, R.C.M. 1947.

(2) The governor shall appoint the workers' compensation judge for a term of six (6) years in the same manner provided by section 93-705 through 93-717, R.C.M. 1947, for the appointment of supreme or district court judges. A vacancy shall be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9 of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but shall be accorded retirement benefits under the public employees' retirement system.

Section 2. There is a new R.C.M. section numbered 92-848 that reads as follows:

92-848. Powers of the workers' compensation judge. (1) A claimant, compensation plan one employer, or insurer who has a dispute concerning any benefits under Title 92, R.C.M. 1947, may petition the workers' compensation judge provided for in section 82A-1016. The judge, after a hearing, shall make a final determination of the dispute and, in accordance with the law on benefits as set forth in Title 92, fix and determine any benefits to be paid, and specify the manner of payment.

(2) The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment, but no disability has resulted therefrom.

(3) All orders allowing full and final compromise settlements of workers' compensation claims shall be immediately referred to the workers' compensation judge, and the judge may within ten (10) days of the judge's receipt of an order disapprove an order allowing a full and final compromise settlement.

(4) The judge has continuing jurisdiction of cases in which a petition under subsection (1) of this section has been filed, and may, upon the application of any party, review, diminish, or increase in accordance with the law on benefits as set forth in Title 92, any benefits awarded or settlement agreements, except for any final settlement or award of compensation more than four (4) years after the settlement has been made and except for any order approving a full and final compromise settlement

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of compensation, upon the grounds that the disability of the person has changed.

Section 3. There is a new R.C.M. section numbered 92-849 that reads as follows:

92-849. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused, either prior or subsequent to the issuance of an award, the full amount of the order, decision or award may be increased by ten percent (10%) of the weekly award. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge and such a finding constitutes good cause to rescind, alter or amend any order, decision or award previously made in the cause for the purpose of making the increase provided herein.

Section 4. There is a new R.C.M. section numbered 92-850 that reads as follows:

92-850. Location of office. The principal office of the workers' compensation judge shall be in the city of Helena.

Section 5. There is a new R.C.M. section numbered 92-851 that reads as follows:

92-851. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this act. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment and supplies, shall be paid out of the workers' compensation administration fund.

Section 6. There is a new R.C.M. section numbered 92-852 that reads as follows:

92-852. Administrative Procedure Act. (1) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(2) Notwithstanding section 82-4216, R.C.M. 1947, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

Section 7. Sections 92-812, 92-813, 92-815 through 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 through 92-836, 92-1347, 92-1350, 92-1351, 92-1353 through 92-1355, 92-1357, 92-1359 through 92-1365, R.C.M. 1947, are repealed.

Section 8. **Effective date.** Section 1 of this act is effective on passage and approval.

Approved May 6, 1975.

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CHAPTER NO. 538

AN ACT TO REQUIRE PRIOR TO ISSUANCE OF A STRIP MINING PERMIT, THE WRITTEN CONSENT OF THE OWNER OF A SURFACE ESTATE OVERLYING THE MINERAL ESTATE TO BE MINED WHEN SUCH OWNER DOES NOT OWN THE MINERAL ESTATE; AMENDING SECTION 50-1036, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1036, R.C.M. 1947, is amended to read as follows:

"**50-1036. Definitions.** Unless the context requires otherwise in this act:

(1) "mineral" means coal and uranium;

(2) "overburden" means all of the earth and other materials which lie above a natural mineral deposit and also means such earth and other material after removal from their natural state in the process of strip mining;

(3) "strip mining" means any part of the process followed in the production of mineral by the open cut method including mining by the auger method or any similar method which penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine which enters the deposit from a surface excavation, or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral;

(4) "prospecting" means the removal of overburden, core drilling, construction of roads or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit;

(5) "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(6) "operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from a designated strip mine area, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit;

(7) "operator" means a person engaged in strip mining who removes or intends to remove more than ten thousand (10,000) cubic yards of mineral or overburden;

(8) "person" means a person, partnership, corporation, association, or other legal entity, or any political subdivision, or agency of the state;

(9) "method of operation" means the method or manner by which the

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cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected;

(10) "topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macro- and micro-organisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth;

(11) "department" means the department of state lands provided for in Title 82A, chapter 11;

(12) "commissioner" means the commissioner of state lands provided for in section 82A-1104;

(13) "board" means the board of land commissioners provided for in Article X, section 4 of the constitution of this state;

(14) "reclamation" means backfilling, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining under a plan approved by the department;

(15) "degree" means from the horizontal, and in each case is subject to a tolerance of five percent (5%) error;

(16) "contour strip mining" means that strip mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench;

(17) "bench" means the ledge, shelf, table, or terraces formed in the contour method of strip mining;

(18) "fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or down slope from the cut section as formed in the contour method of strip mining;

(19) "abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume;

(20) "written consent" means such written statement as is executed by the owner of the surface estate, upon a form approved by the department, demonstrating that such owner consents to entry of an operator for the purpose of conducting strip mining operations and that such consent is given only to such strip mining and reclamation operations which fully comply with the terms and requirements of this chapter;

(21) "surface owner" means a person (a) who holds legal or equitable title to the land surface; and (b) whose principal place of residence is on the land; or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip mining operations;

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or who receives directly a significant portion of his income, if any, from such farming or ranching operations; (c) or the state of Montana where the state owns the surface;

(22) "waiver" means any document which demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip mining methods."

Section 2. There is a new R.C.M. section numbered 50-1039.1 that reads as follows:

50-1039.1. Protection of the surface owner. In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by strip mining operations, the application for a permit shall include the written consent, or a waiver by, the owner or owners of the surface lands involved to enter and commence strip mining operations on such land, except that nothing in this section applies when the mineral estate is owned by the federal government in fee or in trust for an Indian tribe.

Approved May 6, 1975.

CHAPTER NO. 539

AN ACT TO AMEND SECTION 16-2618, R.C.M. 1947, TO ALLOW A LOCAL GOVERNING BODY TO SOLICIT BIDS FOR THE INVESTMENT OF PUBLIC FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2618, R.C.M. 1947, is amended to read as follows:

"16-2618. Deposit of public funds by county, city and town treasurers. (1) It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent banks, building and loan associations or savings and loan associations located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the *local governing body* may designate, and no other. The treasurer shall take from such bank, building and loan association or savings and loan association such security as the *local governing body* may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said *local governing body* is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank, building and loan association or savings and loan association authorized herein above in a savings or time deposit; provided that the bank or banks or building and loan association or savings and loan association in which the money is deposited shall pay on the moneys no less than the rate of interest as is paid on money

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from private sources on the same terms. Refusal of any bank, building and loan association or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the *deposit of public funds* as set forth in this act, and provided that said *local governing body* is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said *local governing body* may require security for only any such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the department of intergovernmental relations. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the *appropriate governing body* upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4)(a) Demand deposits shall be placed only in banks. When more than one bank is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such demand deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such demand deposits shall be maintained.

(b) Such public moneys not necessary for immediate use by such

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county, city or town which are not invested in direct obligations of the United States government as authorized herein *may* be placed in time or savings deposits with any bank, building and loan association or savings and loan association in the county, city or town. When more than one bank, building and loan association or savings and loan association is available in any county, for the deposit of such county funds, or in any city or town for the deposit of such city or town funds, such funds *may* be distributed ratably among all of such banks, building and loan associations and savings and loan associations qualifying therefor, substantially in proportion to the total property taxes paid in such county or the county in which such city or town is located during the preceding year, including taxes on shares of bank stock, by each such bank, building and loan association or savings and loan association willing to receive such time or savings deposits under the terms of this act.

(c) In lieu of a ratable distribution among banks, building and loan associations, and savings and loan associations within the county, city or town, the local governing body may solicit bids without advertising from any bank, building and loan association, or savings and loan association in a county having at least two such financial institutions. Such institutions may request in writing that they be listed for solicitation on bids for public moneys not necessary for immediate use by the unit of local government. In counties having less than two such institutions, the local governing body may solicit bids from, and deposit public moneys in, such institutions in neighboring counties unless the local financial institution agrees to pay the same rate of interest bid by the neighboring financial institutions. The governing body may solicit bids by notice sent by mail to the investment institutions whose names are listed as provided herein. The provisions of this section shall be considered as meeting the requirements of section 16-2618 (4)(b).

(5) Whenever it shall come to the attention of the department of intergovernmental relations that the funds of any county, city or town are not properly *deposited* as provided in this act, the department of intergovernmental relations shall order the treasurer of such county, city or town to *deposit* said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the department of intergovernmental relations to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. Any banks, building and loan associations or savings and loan associations receiving such deposits, shall, through its president and cashier or secretary, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank, building and loan association or savings and loan association during the quarter, the amount of daily balance in dollars, and the amount of interest by such banks, building and loan associations or savings and loan associations credited or paid therefor, and showing that neither such bank, building and loan association or savings and loan association nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank, building and loan association or savings

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and loan association. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, building and loan association or savings and loan association, until the security for such deposits shall have been first approved by the *local governing body* and delivered to the treasurer.

(6) Except as provided in subsection (8) of this section, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank, building and loan association or savings and loan association pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, building and loan association or savings and loan association, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank, building and loan association or savings and loan association.

(8) Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school district in savings or time deposits in a state or national bank, building and loan association or savings and loan association insured by the F.D.I.C. or the F.S.L.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050."

Approved May 12, 1975.

CHAPTER NO. 540

AN ACT AUTHORIZING A BOARD OF COUNTY COMMISSIONERS TO CLASSIFY AND MANAGE COUNTY OWNED LANDS AND TO RETAIN, LEASE, OR DISPOSE OF INTERESTS IN SUCH LANDS;

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REPEALING SECTIONS 84-4193, 84-4194, AND 84-4198, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-4190.1 that reads as follows:

84-4190.1. Purpose. The purpose of this act is to authorize a board of county commissioners to establish criteria for the classification of unsold tax deed lands and other county owned lands, however acquired, and to classify such lands for retention or disposal in accordance with such criteria so that county owned lands shall be used in the best interests of the county and for the public benefit and welfare, to encourage the application of a "multiple use" principle in the utilization and administration of such lands so that the administration of lands classified for retention can be coordinated with land use planning, zoning, grazing and agricultural land improvement, fish and wildlife habitat improvement and enhancement, recreation, access to other intermingled or adjacent multiple use areas, and for any other appropriate uses which are in the best interests of the county or which will advance the public benefit and welfare, and to grant sufficient powers to the board of county commissioners to enable the board to achieve the foregoing purpose.

Section 2. There is a new R.C.M. section numbered 84-4190.2 that reads as follows:

84-4190.2. Definitions. As used in this act:

(1) "Multiple use" means the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the county; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output; and the use of said lands, where possible, to afford access in multiple use areas to federal and state lands.

(2) "Board" means the board of county commissioners.

Section 3. There is a new R.C.M. section numbered 84-4192.1 that reads as follows:

84-4192.1. Powers and duties of board regarding county lands. (1) Any lands previously or hereafter offered for sale by the county commissioners of any county under section 84-4190, and not sold at such sale, or any lands concerning which the preferential right to purchase has been terminated and barred under the provisions of section 84-4190, and any other lands owned by the county, however acquired may, in the discretion and at the election of the board, be administered by the board under

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this section. The board may, in its discretion, elect to exercise all or any of the powers and authority granted to it by this act, and to the extent it so elects, the provisions of this act shall be controlling and shall supersede all conflicting provisions of other acts. The board may:

(a) establish criteria for the classification of such lands;

(b) classify such lands, surface and subsurface, for retention or disposal, and for such purposes and uses as the board may determine are in the best interests of the county, and for the public benefit and welfare, and in so doing, the board shall consider the multiple use potential of said lands, and the potential of said lands as access to other intermingled or adjacent multiple use lands or areas;

(c) grant permits or licenses to use the lands in such manner as the board may determine and in the best interests of the county, and for the public benefit and welfare, fix the terms, conditions, and price of such permits or licenses;

(d) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including, but not limited to, the Montana department of fish and game, the bureau of land management, conservation districts, and the Montana department of state lands;

(e) trade or exchange such lands with individuals or other governmental agencies, state or federal, such trades or exchanges to be made pursuant to terms, conditions, and procedures adopted by the board;

(f) grant leases of the lands for such purposes and uses as the board may determine are in the best interests of the county, including the exploration and development of oil, gas, and other minerals, and to fix the terms and conditions of such leases and the consideration to be paid by any lessee, and when for oil, gas, or other mineral exploration or development to reserve to the county a royalty interest as fixed by agreement between the board and the lessee, provided that lease of lands, under this act, shall not be made for a consideration less than an amount equal to the taxes these lands would have levied upon them if they were private lands, and the proceeds of any such lease shall be apportioned on the current year's levy as provided under section 84-4195, R.C.M. 1947;

(g) sell such lands or any part thereof pursuant to the procedures hereinafter provided;

(h) in trading, exchanging, or selling such lands, to make such reservations in favor of the county as the board considers proper, including, but not limited to, reserving to the county of any or all oil, gas, or other mineral or royalty interests, sand, gravel, clay, or other material, right-of-ways or easements for roads, utility lines, and other purposes or uses; and

(i) promulgate rules and regulations for the administration of such lands.

(2) Leases, permits, and licenses shall not extend for a period longer

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than ten (10) years, except that oil, gas, and other mineral leases may be for a term of ten (10) years and as long thereafter as oil, gas, or other minerals are produced in commercial quantities. However, the board may provide for the renewal of such leases, permits, and licenses.

(3) The board may authorize a lessee to place upon the lands improvements directly related to conservation of the land or necessary for proper utilization of the land for the purposes for which it is leased. Whenever another person becomes the lessee of such land, such other persons shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession of such lands. In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained by three (3) arbitrators, one (1) of which shall be appointed by the former lessee, one (1) by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the former lessee and the new lessee. The value of the improvements so ascertained and fixed by the arbitrators shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, the dissatisfied party may, within ten (10) days of being notified of the arbitrators' decision, appeal from that decision to the board, and the decision of the board shall be final. Any costs incurred by the board in reexamining the decision of the arbitrators shall be borne by the former lessee and the new lessee in such proportions as the board may determine. The former lessee may, at the former lessee's option, remove or dispose of the movable improvements, but the same must be removed within sixty (60) days from the date of the expiration of the lease and, if not so removed, then all such improvements shall become the property of the county unless the board for good cause grants additional time for the removal thereof. Before a lease is issued to the new lessee, the new lessee shall show that the former lessee has been paid the value of the improvements as agreed upon by them or as fixed and determined as herein provided, or that the former lessee has elected to remove the improvements.

(4) The provisions of subsection (3) shall apply to the holders of permits or licenses for the use of county lands.

(5) The board shall make an order for public auction of any lands classified for sale, such sale to be held at the front door of the county courthouse. Notice of the sale shall be given by publishing a notice in a newspaper published in the county once a week for three (3) consecutive weeks preceding the date fixed for the sale. The first publication of the notice shall be made not more than thirty (30) days prior to the sale date. If there is no newspaper published in the county, the notice shall be given by posting copies at three (3) of the most public places in the county at least twenty (20) days, but not more than thirty (30) days, preceding the sale date. The notices shall describe the land to be sold and the appraised value thereof and no sale may be made for less than the appraised value thereof as fixed by the board. The sale shall be for cash, or on such terms as the board may approve, provided at least twenty percent (20%) of the purchase price shall be paid in cash. The lessee, permittee, or licensee of any of the lands, then subject to a lease, permit, or license, shall have

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a preference to purchase the lands at an amount equal to that bid by the highest bidder at the sale.

(6) Any of the lands classified for exchange by the board may be exchanged for any other lands pursuant to such procedures as the board may adopt, and all such exchanges must be for equivalent value. If the lands sought to be exchanged are not of equivalent value, any difference may be equalized by a cash payment. Any procedures adopted by the board for the exchange of land must include public notice as provided under subsection (5) of this section and opportunity for public hearing on the proposed exchange.

(7) The board may appoint not less than three (3) nor more than five (5) residents of the county to act as an advisory committee to the board in implementing the provisions of this act. The duties of the advisory committee are to be established by the board. The board may provide for the payment of expenses incurred by the advisory committee in the carrying out of their duties.

(8) When considered in the best interests of the county, the board may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on acreage or other equitable basis, and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements, and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases.

(9) All proceeds from any use or disposition of lands pursuant to the terms of this act shall be apportioned and distributed according to the provisions of section 84-4195.

Section 4. There is a new R.C.M. section numbered 84-4192.2 that reads as follows:

84-4192.2. Limitation to lands not necessary for county business — appraisal required.

The sale, exchange, lease or issuance of licenses and permits of county lands as provided in this act shall extend only to those lands not necessary to the conduct of the county's business.

The county commissioners shall, before they sell, exchange or lease lands under the provisions of this act, cause such lands to be appraised by a qualified, independent person or persons who may be but is not required to be an agent of the state department of revenue, to determine the value of such lands for the purpose of such sale, exchange or lease. For the purposes of this subsection a renewal of the lease shall be considered an initial lease, if the renewal is for a term exceeding five (5) years.

Section 5. There is a new R.C.M. section numbered 16-4808 that reads as follows:

16-4808. Sale, lease or exchange of dedicated park lands. (1) For the purposes of this act, lands dedicated to the public use for park or play-

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ground purposes under section 11-3864, or a similar statute, or pursuant to any instrument not specifically conveying land to be a governmental unit other than a county, are deemed to be county lands. A county may not sell, lease or exchange lands dedicated for park or playground purposes except as provided under this act.

(2) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice of intention to sell, lease or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under this act.

(3) Any revenue realized by a county from the sale, exchange or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in section 11-3864 for cash received in lieu of dedication.

Section 6. **Severability.** It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Sections 84-4193, 84-4194, and 84-4198, R.C.M. 1947, are repealed.

Approved May 12, 1975.

CHAPTER NO. 541

AN ACT TO AMEND SECTIONS 26-904, 26-906, 26-915, 26-916, 26-918, 26-919 AND 26-920, R.C.M. 1947, RELATING TO THE LICENSING AND REGULATION OF OUTFITTING AND GUIDING OF HUNTING AND FISHING PARTIES WITHIN THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-904, R.C.M. 1947, is amended to read as follows:

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"**26-904. Who deemed outfitter.** For the purpose of this act, the word "outfitter" shall mean any person or persons, company or corporation who shall engage in the business of outfitting for hunting or fishing parties, as the term is commonly understood, who shall for consideration provide any saddle or pack animal or animals or personal service for hunting or fishing parties, camping equipment, vehicles or other conveyance except boats for any person or persons to hunt, trap, capture, take or kill any game, or who shall for consideration furnish a boat or other floating craft and accompany any person or persons for the purpose of catching fish, or who shall aid or assist any person or persons in locating or pursuing any game animal. *The providing of the above mentioned services, property or equipment shall be conclusively presumed to have been for consideration for purposes of this act if the same, or any thereof, are provided by any person, company or corporation for more than two (2) parties or two (2) other persons during any calendar year or on more than two (2) occasions during any such calendar year.*"

Section 2. Section 26-906, R.C.M. 1947, is amended to read as follows:

"**26-906. Outfitter and employees of outfitter equally responsible with others for violations of law—must report violations.** Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of the law; any such outfitter or employee of such outfitter, who shall willfully fail to or refuse to report any violation of the law, shall be liable to the penalties as herein provided. *If any professional guide commits any violation of the laws, or applicable regulations, relating to fish and game, outfitting or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.*

No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana."

Section 3. Section 26-915, R.C.M. 1947, is amended to read as follows:

"**26-915. Application for license — contents — requirements and qualifications — fees.** (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the fish and game commission which shall include:

(a) The applicant's full name, address and telephone number.

(b) The address of his principal place of business in the state of Montana.

(c) The amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application.

(d) The experience of the applicant, including years of experience as

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an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain.

(e) A signed statement of the licensed outfitter by whom the professional guide is to be employed, that the said guide is in fact, to be employed by such outfitter and stating that said outfitter recommends the applicant for his qualifications.

(f) A statement by a Montana fish and game warden to the fish and game director that the equipment listed on the application has been inspected by said warden and that the same is in fact, owned or *leased* by the applicant and is in good operating condition and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant.

(g) A statement of the maximum number of guests to be taken at any one (1) time.

(h) Each new applicant who intends to outfit on a national forest must have the written approval of the rangers in whose district he will establish hunting camps, and such written approval shall accompany the application.

(i) *Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this act and any license issued pursuant thereto shall be in the name of that person and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.*

(2) Each applicant for, *and holder of,* an outfitter's license *or any renewal thereof,* shall, *in the opinion of the director,* meet the following *qualifications*:

(a) *Be a person of at least eighteen (18) years of age, in possession of all natural faculties, of ordinary intelligence and in such physical condition as to be able to perform his duties as an outfitter.*

(b) Be a citizen of the United States and a resident of Montana for a full two (2) years, unless the residency requirement is waived by the fish and game commission.

(c) To own or hold under written lease or to represent a company, corporation or partnership who owns or holds under written lease the equipment and facilities as is necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients. All equipment and facilities shall be subject to inspection at all reasonable times and places by the fish and game commission or its designated agent.

(d) Be a person who has demonstrated a respect for, and compliance with, the laws of any state or of the United States and all regulations promulgated thereunder, as to matters of fish and game, conservation of natural resources and preservation of the natural ecosystem without pollution thereof.

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(e) Have not been convicted, or forfeited bond, of one hundred dollars ($100) or more on more than one (1) violation of the fish and game laws of any state or the United States within the past five (5) years.

(f) Have not, at any time, practiced fraud, deception or material misrepresentation in procuring any previous outfitter's or guide's license from the state of Montana.

(g) Have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting.

(h) Have not been finally adjudged by a court of law, guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or guide during the license year immediately preceding that for which the application is made.

(i) Have not committed any negligent act or misconduct while acting as an outfitter or guide which negligence or misconduct caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide during the license year immediately preceding that for which the application is made.

(j) Have not, at any time, been convicted of a felony unless civil rights have been restored pursuant to law. No person may apply for, or hold an outfitter's license during any period of time in which a deferred sentence has been imposed for a felony.

(k) Have substantially complied with all fish and game department regulations and state and federal laws concerning outfitters and guides, if the applicant has previously held a license as such outfitter or guide.

(l) Pass a standard examination administered by the fish and game director, or an agent designated by him, which said examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The said examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(i) Fish and game laws and regulations.

(ii) Practical woodsmanship.

(iii) General knowledge of big game.

(iv) Field preparation of trophies.

(v) Care of game meat.

(vi) Use of outfitter's gear as shown on the application.

(vii) Knowledge of area and terrain.

(viii) Knowledge of firearms.

(ix) Federal and state regulations as applicable to outfitting.

(x) Practical first aid.

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(3) Each applicant for a professional guide's license shall meet the following requirements:

(a) *Be a person of at least eighteen (18) years of age, in possession of all natural faculties, of ordinary intelligence and in such physical condition as to be able to perform his duties as a professional guide.*

(b) Be a citizen of the United States and a resident of Montana as defined in this act.

(c) Be endorsed and recommended by an outfitter with a valid license.

(4) A resident guide shall have been issued a valid resident wildlife conservation license.

(5) Residence requirements for procuring an outfitter's license are hereby waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana except for fee.

For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

(6) Applications shall be made to and filed with the fish and game director and accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied. The fee is to be used in investigation of the applicant, in enforcement of this act, and for administrative costs.

Resident outfitter's license fee .....$ 50.00

Resident professional guide's fee .....$ 15.00

Resident guide's license is a valid Montana wildlife conservation license.

Nonresident outfitter's license fee $150.00

Nonresident professional guide's fee $100.00

Provided, however, that if the nonresident resides in a state requiring residents of the state of Montana to pay in excess of said amounts for similar license, the fee for such nonresident outfitters or guides shall be the same amount as such higher fee charged in the state where such nonresident resides.

(7) The fish and game director in his discretion may cause to be made such additional investigation and inquiry, relative to the applicant for outfitter's license and an applicant's qualifications as he shall deem advisable. *The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant setting forth in the notice the grounds upon which the denial or refusal is based.* Final decision as to issuance of renewal applications shall be made not later than thirty (30) days from the date of receipt of the completed application for renewal of license, and upon a new application, not

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later than ninety (90) days from the date of receipt of the completed application for license. A licensee in good standing shall be entitled to a new license for the ensuing license year upon complying with the provisions of this section, but is exempt from having to retake the written examination.

(8) Only one (1) application for an outfitter or guide's license may be made any one (1) license year. If any application is denied, subsequent applications by the same applicant for the license year involved are null and void.

Section 4. Section 26-916, R.C.M. 1947, is amended to read as follows:

"26-916. Kinds of license issued. (1) After receipt of the application and when all the conditions and requirements of this act have been satisfied, the fish and game director shall issue either of the following licenses depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application.

(a) A general license authorizing him to perform all the functions of an outfitter as that term is defined in section 26-904, R.C.M. 1947.

(b) A special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed, and shall be valid for the licensing year in which issued. If the application is denied, the fish and game director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the purpose of this act, a person may serve as a professional guide under his employer's license after submitting his application with the proper license fee until license is issued or for ten (10) days after notification of rejection of license.

(3) To be valid, a professional guide license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

(4) No outfitter license may be transferred during any license year, provided that an individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding such license for the use and benefit of a named partnership or corporation.

(5) No person may hold more than one (1) outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation nor may the name of any partnership or corporation appear on more than one (1) current outfitter's license.

(6) Notwithstanding any other provision or law a license shall expire on the last day of the license year for which it was issued."

Section 5. Section 26-918, R.C.M. 1947, is amended to read as follows:

"26-918. Grounds for suspension or revocation of license. Every license, *or right to apply for and hold such license,* may be suspended or revoked by the fish and game commission upon any of the following grounds:

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(1) Having ceased to meet all of the qualifications for holding a license.

(2) Fraud or deception in procuring a license.

(3) Fraudulent, untruthful or misleading advertising.

(4) Conviction of a felony, until civil rights are restored *or until time of any deferred sentence for a felony has expired.*

(5) Two (2) convictions, *or bond forfeitures, of one hundred dollars ($100) or more as to* violations of the fish and game *or outfitting* laws *or regulations* of the state of Montana *or of the United States.*

(6) A substantial breach of any contract with any person utilizing *the* services *of the license holder provided that such breach is established as a matter of final judgment in a court of law.*

(7) The willful employment of an unlicensed guide by an outfitter.

(8) *Negligence* or misconduct while acting as an outfitter or guide *which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide."*

Section 6. Section 26-919, R.C.M. 1947, is amended to read as follows:

"26-919. Procedure for revocation or suspension of license. Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. The advisory council *may make recommendation as to the* action to be taken *provided that any such recommendation shall be made, in writing and delivered to the director, within twenty (20) days after date of transmittal of such information to the council.* If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and report his action to the fish and game commission and will advise the *licensee charged* and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than twenty (20) days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license *or his right to hold a license* for a period not to exceed *three* (3) years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown

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at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission."

Section 7. Section 26-920, R.C.M. 1947, is amended to read as follows:

"**26-920. Appeal to district court.** Any person who feels aggrieved by any action of the *director* in denying the issuance of a license, *or of the fish and game commission in suspending or revoking* his license as an outfitter or guide, may appeal to the district court of the county of his residence, within *thirty (30)* days after the *date of such action* by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper. *If the commission or the court has ordered a stay of any revocation or suspension and the commission's revocation or suspension is thereafter sustained by the court the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the commission.*"

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 12, 1975.

CHAPTER NO. 542

AN ACT REQUIRING THE REGISTRATION OF CERTAIN AIRCRAFT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 1-325 that reads as follows:

1-325. Aircraft must be registered — situs for registration. (1) Aircraft customarily kept in this state shall be registered with the department of intergovernmental relations, which may charge a fee therefor of not more than ten dollars ($10). The registration shall be renewed annually on or before February 1 each year. This act shall not apply to:

(a) aircraft owned and operated by the federal government, the state or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled

for the primary purpose of carrying persons or property for hire in interstate or international transportation.

(2) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county. All aircraft shall be subject to all state, county and school district tax levies and all other levies designated for aircraft or airport related uses. Such aircraft shall not be liable for other city tax levies.

Section 2. There is a new R.C.M. section numbered 1-326 that reads as follows:

1-326. Penalty for late registration, evasion, or false registration statement. (1) When an aircraft required to be registered under the provisions of this act is not registered on or before February 1 of the current calendar year, a penalty fee of one hundred dollars ($100) shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) An application for registration shall be accompanied by a copy of the receipt for personal property tax paid, issued by the treasurer of the county where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in section 94-7-203.

(3) A person who operates an aircraft required to be registered in the state without having in such aircraft a certificate of registration issued by the department of intergovernmental relations for that aircraft, commits a misdemeanor.

Section 3. There is a new R.C.M. section numbered 84-4218 that reads as follows:

84-4218. Prorated taxes. A person who acquires an aircraft required to be registered under section 1-325 after February 1 in any year shall register the aircraft within thirty (30) days of acquiring it. The county treasurer shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided for proration of motor vehicle taxes.

Approved May 12, 1975.

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CHAPTER NO. 543

AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF PERSONS IN MONTANA REPRESENTING THEMSELVES AS SPEECH PATHOLOGISTS, AUDIOLOGISTS, SPEECH PATHOLOGY OR AUDIOLOGY AIDES, AND PROVISIONALLY CERTIFIED SPEECH PATHOLOGISTS OR AUDIOLOGISTS, AND CREATING A BOARD OF SPEECH PATHOLOGY AND AUDIOLOGY, PRESCRIBING ITS POWERS AND DUTIES; PROVIDING PENALTIES FOR VIOLATIONS; AND AMENDING SECTION 93-701-4, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-3901 that reads as follows:

66-3901. Purpose. The legislature of the state of Montana declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare, and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, and to protect the public from unprofessional conduct by qualified speech pathologists and audiologists, and to help assure the availability of the highest possible quality speech pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech pathology or audiology services to the public.

Section 2. There is a new R.C.M. section numbered 66-3902 that reads as follows:

66-3902. Definitions. As used in this act:

(1) "Board" means the board of speech pathologists and audiologists.

(2) "Department" means the department of professional and occupational licensing.

(3) "Speech pathologist" means one who practices speech pathology and who presents himself to the public by any title or description of services incorporating the words "speech pathologist", "speech correctionist", "speech therapist", "speech clinician", "language pathologist", "language therapist", "language clinician", or any similar title or description of services.

(4) "Speech pathology aide" means any person meeting the minimum requirements established by the board of speech pathology and audiology who works directly under the supervision of a licensed speech pathologist.

(5) "Audiologist" means a person who practices audiology and who presents himself to the public by any title or description of services incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of service.

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(6) "Audiology aide" means any person, meeting the minimum requirements established by the board of speech pathology and audiology who works directly under the supervision of a licensed audiologist.

(7) "Practice of speech pathology" means the application of principles, methods and procedures for the measurement, testing, evaluation, prediction, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of evaluation, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals.

(8) "Practice of audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory behavior related to hearing impairment.

(9) "Association" means the Montana speech and hearing association.

(10) "ASHA" means the American speech and hearing association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing directly or indirectly any suspended or unlicensed person to perform any work covered by this act unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable or untruthful.

(12) "Provisionally licensed speech pathologist or audiologist" means those speech pathologists or audiologists who are currently practicing the profession in the state of Montana, who do not meet the minimum requirements for licensure as defined in this act and who are eligible for provisional licensure conditioned on biennial evidence of satisfactory progress towards meeting the requirements for licensure as provided in this act. This provisional licensure, as defined in this act, shall exist for no longer than six (6) years from the date of enactment of this act under any circumstance.

Section 3. There is a new R.C.M. section numbered 66-3903 that reads as follows:

66-3903. License required. (1) A license shall be issued to qualified persons either in speech pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications and in such instances the license fee shall be as though for one (1) license.

(2) No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this act.

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Section 4. There is a new R.C.M. section numbered 66-3904 that reads as follows:

66-3904. License requirements to practice speech pathology or audiology — exempt activities. (1) Nothing in this act shall prevent a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this act shall restrict or prevent activities of a speech pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this act must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and shall not offer speech pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this act, such persons may consult or disseminate their research findings and scientific information to other such accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this act.

(4) Nothing in this act shall restrict activities and services of a student in speech pathology or audiology from pursuing a course of study in speech pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study and no fee shall accrue directly or indirectly to the student. These persons shall be designated by the title "speech pathology or audiology intern", "speech pathology or audiology trainee" or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this act shall restrict a person from another state from offering speech pathology or audiology services in this state if such services are performed for no more than five (5) days in any calendar year and if the services are performed in cooperation with a speech pathologist or audiologist licensed under this act. However a person not a resident of this state who is not licensed under this act but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by this act, or who is the holder of the ASHA certificate of clinical competency in speech pathology or audiology or its equivalent, may offer speech pathology or audiology services in this state for no more than thirty (30) days in any calendar year, if such services are performed in cooperation with a speech pathologist or audiologist licensed under this act and by securing a temporary license from the board subject to such limitations as the board may impose.

(6) Nothing in this act shall restrict any person holding a Class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

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(7) Nothing in this act shall restrict any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and which are described in Title 66, chapter 30.

Section 5. There is a new R.C.M. section numbered 82A-1602.31 that reads as follows:

82A-1602.31. Board of speech pathologists and audiologists — appointment — qualifications.

(1) There is a board of speech pathologists and audiologists.

(2) The board consists of five (5) members, four (4) of whom shall:

(a) be appointed by the governor from names submitted to him by the association;

(b) have been residents of this state for at least one (1) year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech pathology or audiology for at least five (5) years immediately preceding their appointment.

(3) At least two (2) members of the board shall be speech pathologists and at least two (2) shall be audiologists, with the remaining member to be a public member who is a consumer of speech pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members shall at all times be validly licensed in speech pathology or audiology, except for the five (5) members first appointed, who shall also fulfill the licensure requirements of this act and in addition hold the ASHA certificate of clinical competence in speech pathology or audiology or its equivalent.

(4) Within thirty (30) days following the effective date of this act the association shall recommend at least three (3) and no more than five (5) persons for each of the five (5) board positions created by subsection (2) of this section. Not less than sixty (60) days before the end of the board's first full calendar year of existence and, thereafter, not less than sixty (60) days before the end of each calendar year, the association shall recommend at least three (3) and not more than five (5) persons for each vacancy occurring at the end of the calendar year. In the event of a vacancy for an unexpired term, the association shall expeditiously recommend at least two (2) and not more than three (3) persons to fill the vacancy and the governor shall appoint one of those persons to fill the unexpired term.

(5) The governor shall, within sixty (60) days after the effective date of this act, appoint one (1) board member for a term of one (1) year; two (2) for a term of two (2) years; and two (2) for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms with no person eligible to serve more than two (2) full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year, except for the first appointed members who shall serve

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through the last calendar day of the year in which they are appointed before commencing the terms defined in this section.

Section 6. There is a new R.C.M. section numbered 66-3905 that reads as follows:

66-3905. Function of the board and department. (1) The board shall meet at least once every year at a place, day and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance shall a meeting of three (3) board members who are exclusively speech pathologists or exclusively audiologists be considered a quorum.

(2) Each board member shall receive actual and necessary expenses incidental to board meetings and business. Mileage shall be as provided in section 59-801.

(3) The department may employ persons it deems necessary to carry out the provisions of this act.

(4) All meetings of the board for the consideration of and action on matters coming before the board are open to the public, except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

(5) The board may make all rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(6) The department shall prepare a report to the governor as required by law.

(7) The board shall:

(a) administer, coordinate and enforce the provisions of this act;

(b) evaluate the qualifications of each applicant for a license as issued under this act and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this act;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules including but not limited to those governing ethical standards of practice under this act;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech

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pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this act, by the complaints of its secretary filed with the county attorney, in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings. Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal shall be prima facie evidence of the validity of such documents.

Section 7. There is a new R.C.M. section numbered 66-3906 that reads as follows:

66-3906. Qualifications and requirements for licensure. To be eligible for licensing by the board as a speech pathologist or audiologist, the applicant must:

(1) meet the current academic, supervised clinical practicum and post classroom sponsored employment requirements of the ASHA;

(2) pass an examination approved by the board. The board shall determine the subject and scope of the examination. Written examinations may be supplemented by such oral examinations as the board shall determine. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another licensing fee. An applicant who fails two successive examinations may apply for reexamination after two years of additional professional experience or training.

Section 8. There is a new R.C.M. section numbered 66-3907 that reads as follows:

66-3907. Licensure issuance — expiration — renewal. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this act, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration, and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

(4) The department shall notify each person licensed under this act relative to the date of expiration of his license and the amount of the renewal fee. This notice shall be mailed to each licensed speech pathologist or audiologist at least one (1) month before the expiration of the license.

(5) Renewal may be made at any time during the sixty (60) days prior to the expiration date by application therefor.

(6) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased ten percent (10%) for each month

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that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(7) Application for renewal following a lapse of one (1) year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(8) Each year the department shall publish a list of all persons licensed under the act containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this act, place a copy on file in the secretary of state's office, and furnish copies to the public upon request.

(9) The board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice.

Section 9. There is a new R.C.M. section numbered 66-3908 that reads as follows:

66-3908. Qualifications and requirements for licensure — reciprocity and waiver. (1) Application for examination for licensing a speech pathologist or audiologist shall be made upon forms prescribed by the board.

(2) Prior to July 1, 1976, the board shall license as a speech pathologist or audiologist any person who pays the prescribed fee, and who submits an affidavit that he meets the current academic, supervised clinical practicum and post classroom sponsored employment requirements of the ASHA.

(3) Prior to July 1, 1976, a provisional license may be issued to an individual who holds a bachelor's degree with a major in speech pathology or audiology, who has accumulated one hundred seventy-five (175) clock hours of clinical practicum, and who has worked in this state as a speech pathologist or audiologist for at least one (1) academic year. The provisionally-licensed speech pathologist or audiologist must work under the direct supervision of a licensed or certified speech pathologist or audiologist. The extent to which direct supervision will be provided for the provisionally-licensed speech pathologist or audiologist will be determined by the supervising clinician. Generally, the supervising speech pathologist or audiologist shall provide direct assistance to the provisionally-licensed speech pathologist or audiologist at least four (4) days per month. Most of the contacts by the supervising speech pathologist or audiologist shall be in person, but other avenues of contact may be made. Those persons granted provisional licensure shall complete the academic, clinical practicum and examination requirements for licensure within six (6) years after the effective date of this act. Twelve (12) quarter-hour credits of additional professional training towards licensure qualifications or any other proposed educational plan that leads to the same goal as presented to and approved by the board, must be obtained every

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two (2) years for renewal of provisional licensure. Provisionally-licensed speech pathologists or audiologists who have not attained appropriate eligibility status within six (6) years of the date of enactment, will no longer be eligible to practice speech pathology or audiology in the state of Montana, except for those persons granted certification under subsection (8) of this section, but may work as a speech pathology or audiology aide as defined in this act.

(4) After July 1, 1976, all applicants must meet all the requirements set forth in this act.

(5) The board may waive the examination described in this act for those qualified applicants who, on the effective date of this act, are actively engaged in the practice of speech pathology or audiology in this state, providing that they file a license application within one (1) year of the effective date of this act.

(6) The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

(7) The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American speech and hearing association in the area for which they are applying for a license.

(8) The board shall, on presentation and documentation in writing by a petitioner have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this act. This prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case.

Section 10. There is a new R.C.M. section numbered 66-3909 that reads as follows:

66-3909. Examination. (1) Except as otherwise provided in this act, an applicant shall be examined for speech pathology or audiology by the board, and shall pay to the board, at least thirty (30) days prior to the date of the examination, the examination fee for each examination as prescribed by this act.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech pathology or audiology as it considers appropriate. It may also examine the candidate with regard to his professional skills and his judgment in the utilization of speech pathology or audiology techniques and methods.

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(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination if any. Transcripts of oral examinations shall be retained by the board for at least one (1) year following the date of examination.

(7) A speech pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state, may perform activities and services of a speech pathology or audiology nature without a valid license pending disposition of application.

Section 11. There is a new R.C.M. section numbered 66-3910 that reads as follows:

66-3910. Licensing. (1) The amount of fees prescribed in connection with a license as a speech pathologist or audiologist shall be as follows, the exact fee to be determined by the board each year based on costs and predicted expenditures:

(a) application and examination fee for a license, no less than fifty dollars ($50) nor more than one hundred dollars ($100);

(b) license fee, and renewal thereof, no less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(2) All moneys received by the department shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the board and subject to section 82A-1603(6).

(3) Each licensed speech pathologist or audiologist shall on or before July 31 of the year of expiration of his license pay to the board the fee for the renewal of his license.

(4) Renewal will be every two years beginning on July 1 of the appropriate year.

(5) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee while the license remains suspended to engage in the licensed activity, or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(6) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(7) A person who fails to renew his license within the four (4) years after its expiration may not renew it, and it may not be restored, reissued or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of the act.

(8) No license tax shall be imposed upon speech pathologists or audiologists by a municipality or any other subdivision of the state.

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Section 12. There is a new R.C.M. section numbered 66-3911 that reads as follows:

66-3911. Powers of board over licensees — unprofessional conduct defined. (1) The board may refuse to issue or renew a license, or may suspend or revoke the license of any licensee if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes, but is not limited to:

(a) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(b) being found guilty of unprofessional conduct, or having violated ethical standards of practice established pursuant to this act;

(c) violating any lawful order or rule of the board;

(d) violating any provision of this act.

(2) Denial, suspension or revocation of a license is permissible only after a hearing and procedures which comply with all applicable requirements of the Montana Administrative Procedure Act.

(3) One year after denial, suspension, or revocation of a license, a person may reapply for a license. The board may in its discretion require an examination for reinstatement.

(4) Where an applicant or licensee has been convicted of a felony or a crime involving moral turpitude, the board may suspend or revoke his license, or may decline to issue a license when:

(a) the time for appeal has elapsed;

(b) the judgment of conviction has been affirmed on appeal;

(c) an order granting probation is made suspending the imposition of sentence.

Section 13. There is a new R.C.M. section numbered 66-3912 that reads as follows:

66-3912. Penalty. A person convicted of violating this act shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Section 14. There is a new R.C.M. section numbered 66-3913 that reads as follows:

66-3913. Injunction of unlawful practice — restrictions on scope of practice. The practice of speech pathology or audiology in any way other than as defined in this act may be enjoined by the district court on petition by the board.

Section 15. Section 93-701-4, R.C.M. 1947, is amended to read as follows:

"93-701-4. Persons in certain relations cannot be examined. There

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are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

6. Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution, provided however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

8. A publisher, editor, reporter or other person connected with or employed upon a newspaper, or by a press association or wire service, or any person who has been so connected or employed, cannot without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be adjudged in contempt by a court, the legislature or any administrative body for refusing to disclose the source of any information procured while so connected or employed for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, without his consent be examined as to any communication made to him in confidence for the purpose of proper

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publication nor shall he be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television.

9. A speech pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him."

Approved May 12, 1975.

CHAPTER NO. 544

AN ACT TO BE KNOWN AS THE MONTANA TRAFFIC SAFETY ACT OF 1975; PROVIDING FOR THE CONSTRUCTION OF FOOTPATHS AND BICYCLE TRAILS ALONG HIGHWAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 32-2624 that reads as follows:

32-2624. Short title. This act may be cited as the "Montana Traffic Safety Act of 1975".

Section 2. There is a new R.C.M. section numbered 32-2625 that reads as follows:

32-2625. Definition. As used in this act, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.

Section 3. There is a new R.C.M. section numbered 32-2626 that reads as follows:

32-2626. Footpaths and bicycle trails to be established — funding. (1) Out of the funds received by the highway commission or by any county or city from the state highway commission earmarked revenue fund, reasonable amounts shall be expended as necessary for the establishment of footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails shall be established along all streets under state jurisdiction. Funds received from the earmarked revenue fund may also be expended to maintain footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas where the construction would enhance traffic safety and convenience. Footpaths and bicycle trails shall be constructed along all sections of the national defense interstate highway system within a reasonable time after the completion of that system.

(2) Footpaths and trails are not required to be established under subsection (1) of this section:

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(a) if the cost of establishing the paths and trails would be excessively disproportionate to the need or probable use; or

(b) where sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

(3) The amount expended by the state highway commission or by a city or county as requested or permitted by this section shall never in any one (1) fiscal year be less than three-quarters of one percent (0.75%) of the amount appropriated to the department of highways from the earmarked revenue fund for the construction program, maintenance program, and preconstruction program.

Section 4. There is a new R.C.M. section numbered 32-2627 that reads as follows:

32-2627. Duties of department of highways. The establishment of paths and trails and the expenditure of funds as authorized by this act is for the promotion of traffic safety on the highways, roads, and streets of the state. The highway commission shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this act. The department of highways shall recommend construction standards for footpaths and bicycle trails. The department shall provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the commission and cities and counties. The commission and cities and counties shall restrict the use of footpaths and bicycle trails under their jurisdiction to pedestrians and nonmotorized vehicles to the maximum possible extent, except that the commission, in cooperation with local governments, may authorize the operation of snowmobiles on designated portions of bicycle trails and footpaths when snow conditions permit.

Approved May 12, 1975.

CHAPTER NO. 545

AN ACT TO PROVIDE A PENALTY FOR CRIMINAL POSSESSION OF DANGEROUS DRUGS WITH INTENT TO SELL.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 54-133.1 that reads as follows:

54-133.1. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in section 54-301. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses one kilogram or more.

(2) A person convicted of criminal possession with intent to sell shall

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be imprisoned in the state prison for a term of not more than twenty (20) years.

(3) Practitioners and agents under their supervision acting in the course of a professional practice as defined by section 54-301 are exempt from this section.

Approved May 12, 1975.

CHAPTER NO. 546

AN ACT TO AMEND SECTION 26-202.1, R.C.M. 1947, TO PROVIDE A FEE INCREASE IN THE RESIDENT AND NONRESIDENT HUNTING LICENSES; TO CHANGE THE CLASS B-2 NONRESIDENT BIG GAME LICENSE TO CLASS B-2 NONRESIDENT COMBINATION BIRD AND FISH LICENSE AND MAKE IT A PREREQUISITE TO PURCHASE HUNTING TAGS; TO PROVIDE FOR CLASSIFICATION OF NONRESIDENT DEER TAGS; TO PROVIDE FOR B-10 NONRESIDENT BIG GAME COMBINATION LICENSE; TO LIMIT THE TOTAL NUMBER OF NONRESIDENT BIG GAME COMBINATION LICENSES SOLD IN A LICENSE YEAR; TO INCLUDE THE NONRESIDENT CONSERVATION LICENSE AS PART OF THE CLASS B-2 LICENSE AND THE RESIDENT CONSERVATION LICENSE AS PART OF THE CLASS AAA LICENSE; TO GIVE THE COMMISSION AUTHORITY TO LIMIT THE NUMBER OF LICENSES SOLD IN DESIGNATED HUNTING DISTRICTS; TO PROVIDE A FEE FOR SPECIAL ELK AND DEER DRAWINGS; TO PROVIDE FOR A SPECIAL NONGAME CERTIFICATE; AND TO PROVIDE A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"**26-202.1. Licenses — fees — classifications of licenses — fees and powers under licenses.** (1) Class A License—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dollars ($5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of *four dollars ($4)* receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized

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to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. *A* holder of any one of the following: a Class A-3, A-4, A-5, B-2, B-5, B-6, *B-7, B-8, or B-10* license, may upon payment of an additional sum of *six dollars ($6)* to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill *the game animals authorized by the licenses held* with bow and arrow and to possess *these carcasses* during special *seasons*, and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, *six dollars ($6) for the license year beginning May 1, 1976, and seven dollars ($7) for each license year thereafter*; Class A-4, Deer B Tag, *twelve dollars ($12)*; Class A-5 Elk Tag, *eight dollars ($8)*; Class A-6, Black or Brown Bear Tag, *six dollars ($6)*; which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars ($20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of *thirty dollars ($30)* to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section

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26-202.1(2)(a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident *Combination* License. *Within the limitations of this section or any commission rule, any* person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of *fifty dollars ($50) may apply to the fish and game office, Helena, Montana for* a Class B-2 license, *and nonresident conservation license as prescribed in section 26-230,* which shall authorize the holder to pursue, hunt, shoot, kill *and possess game birds, and to fish with hook and line as authorized by the rules and regulations of the commission, and to purchase additional and special licenses and tags as provided by law or commission regulation.*

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars ($10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older *and a holder of a nonresident conservation license,* upon the payment of the sum of *fifty dollars ($50)* shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older *and a holder of a Class B-2 nonresident combination license,* upon the payment of the sum of *fifty dollars ($50)* shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Class B-7 and B-8 Licenses. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, and is a holder of a B-2 nonresident combination license, may upon payment of the proper fee or fees and subject to the limitations prescribed by law and commission regulation be entitled to apply to the Fish and Game Office, Helena, Montana, to purchase one each of the following licenses: Class B-7, Deer A Tag, fifty dollars ($50); Class B-8, Deer B Tag, fifty dollars ($50); and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulations of the commission.

(12) B-10 nonresident big game combination license. Any person not a resident as defined in section 26-202.3, R.C.M. 1947, but who is twelve (12) years of age or older may, upon payment of the proper fee or fees

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and subject to the limitations prescribed by law and commission regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license for two hundred twenty-five dollars ($225) which shall entitle the holder to all the privileges of a B-2 nonresident combination license, a deer A tag, and elk tag and a black bear license. This license includes the nonresident conservation license as prescribed in section 26-230, R.C.M. 1947.

(13) Special licenses. Any applicant who is *twelve (12) years of age or older and is* a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident *combination* license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident *one hundred twenty-five dollars ($125)*;

Mountain Goat, resident fifteen dollars ($15), nonresident *seventy-five dollars ($75)*;

Mountain Sheep, resident twenty-five dollars ($25), nonresident *one hundred twenty-five dollars ($125)*;

Antelope, resident *five dollars ($5)*;

Grizzly Bear, resident *twenty-five dollars ($25)*, nonresident *one hundred twenty-five dollars ($125);*

Black or brown bear, nonresident fifty dollars ($50).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars ($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid *resident* applications for licenses exceeds the number of licenses which the fish and game commission desires to issue in any hunting district, then the number of licenses issued to *nonresident license* holders *in that hunting district* shall not exceed ten per cent (10%) of the total issued.

(14) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(15) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal, except beaver, on land owned or leased by him, or his immediate

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family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(16) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents ($.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents ($.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, and A-5 licenses *at two dollars ($2) per license.*

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6, *B-7, B-8, or B-10* licenses to be issued in each of the hunting districts designated by it. *Any license sold may be restricted to a specific hunting area and may specify the species, age, and sex to be taken in order to insure the proper management and propagation of game animals in these areas, provided, however, that no number limit shall be placed on B-7, B-8 and B-10 license by area except in major hunter concentration areas as determined by the commission. Not more than seventeen thousand (17,000) nonresident big game combination licenses (B-10) may be sold in any one license year.*

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(17) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

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(18) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of *thirty-five dollars ($35)* shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6 *and resident conservation licenses as prescribed in section 26-230.* The commission shall furnish each holder of a sportsman's license an appropriate decal.

(19) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older *and a holder of a nonresident Class B-2 combination license*, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(20) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(21) Special elk or deer licenses. (a) Any person who is the holder of a valid resident elk license or a Class B-10 nonresident big game combination license may apply for a special elk license upon payment of a fee of one dollar ($1).

(b) Any person who is the holder of a valid resident deer license or any nonresident who holds a Class B-2 license and a valid deer tag may apply for a special deer license upon payment of a fee of one dollar ($1).

(c) The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection."

Section 2. There is a new R.C.M. section numbered 26-202.7 that reads as follows:

26-202.7. Special elk permits — power of commission. (1) The commission may: (a) provide for the refund of resident elk tag license fees to persons applying for special elk permits in hunting districts where there is no general elk hunting, and may set time limits and describe area restrictions;

(b) designate special elk permit areas where priority will be given to applicants who have not held special elk permits for a period of years to be determined by the commission.

(2) The commission may adopt rules necessary to implement this section.

Section 3. There is a new R.C.M. section numbered 26-202.8 that reads as follows:

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26-202.8. Nongame certificate. (1) In order to promote the preservation and management of nongame wildlife within the state, the commission may issue a nongame certificate or window decal indicating that the holders of the certificates are supporting the natural resource interests of the state of Montana.

(2) The form of the certificates or window decals shall be determined by the commission and the inscription upon it shall indicate that no hunting, fishing or trapping privilege is thereby conferred.

(3) These certificates shall be sold for an annual fee of five dollars ($5).

(4) The proceeds collected from the sale of the certificates shall be deposited in the fish and game fund and be expended for the management, preservation, and propagation of all species of nongame wildlife in the state of Montana.

Section 4. This act shall be effective May 1, 1976.

Approved May 13, 1975.

CHAPTER NO. 547

AN ACT TO REGULATE CONSUMER REPORTING AGENCIES OPERATING IN MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 18-501 that reads as follows:

18-501. Purpose. It is the purpose of this act to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this act. The act's further purpose is to guard an individual's right to privacy guaranteed in Article II, section 10, of the Montana constitution.

Section 2. There is a new R.C.M. section numbered 18-502 that reads as follows:

18-502. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this act.

(2) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

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(3) The term "consumer" means an individual.

(4) (a) The term "consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes; or

(ii) employment purposes; or

(iii) other purposes authorized under section 18-504.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 18-515.

(5) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(6) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(7) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(8) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

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(9) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

Section 3. There is a new R.C.M. section numbered 18-503 that reads as follows:

18-503. Credit rating — property right. A credit rating is a property right with full constitutional protection.

Section 4. There is a new R.C.M. section numbered 18-504 that reads as follows:

18-504. Permissible purposes of reports. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) in response to the order of a court having jurisdiction to issue such an order;

(2) in accordance with the written instructions of the consumer to whom it relates;

(3) to a person which it has reason to believe:

(a) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(b) intends to use the information for employment purposes; or

(c) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(d) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(e) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

Section 5. There is a new R.C.M. section numbered 18-505 that reads as follows:

18-505. Obsolete information. No consumer reporting agency may make any consumer report containing any of the following items of information:

(1) bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen (14) years;

(2) suits and judgments which, from date of entry, antedate the report by more than seven (7) years or until the governing statute of limitations has expired, whichever is the longer period;

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(3) paid tax liens which, from date of payment, antedate the report by more than seven (7) years;

(4) accounts placed for collection or charged to profit and loss which antedate the report by more than seven (7) years;

(5) records of arrest, indictment, or conviction of crime which from date of disposition, release, or parole, antedate the report by more than seven (7) years;

(6) any other adverse item of information which antedates the report by more than seven (7) years.

Section 6. There is a new R.C.M. section numbered 18-506 that reads as follows:

18-506. Disclosure of investigative consumer reports. (1) A person may not procure or cause to be prepared or distribute an investigative consumer report on any consumer unless:

(a) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure is made in a writing mailed, or otherwise delivered, to the consumer, not later than three (3) days after the date on which the report was first requested, and includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (2) of this section; or

(b) the report is to be used for employment purposes for which the consumer applied.

(2) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (1)(a), shall make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five (5) days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

(3) No person may be held liable for any violation of subsection (1) or (2) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (1) or (2).

Section 7. There is a new R.C.M. section numbered 18-507 that reads as follows:

18-507. Compliance procedures. (1) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of sections 18-505 and 18-506 and to limit the furnishing of consumer reports to the purposes listed under section 18-504. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that

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the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 18-504.

(2) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates, and it shall maintain a record of all persons using the information and the source of each piece of information.

(3) When gathering information, a consumer reporting agency shall notify any person who furnishes information that he is liable to suit if the information is false or furnished with malice or willful intent to injure the consumer.

Section 8. There is a new R.C.M. section numbered 18-508 that reads as follows:

18-508. Adverse information. Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report.

Section 9. There is a new R.C.M. section numbered 18-509 that reads as follows:

18-509. Disclosures to governmental agencies. Notwithstanding the provisions of section 18-504, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

Section 10. There is a new R.C.M. section numbered 18-510 that reads as follows:

18-510. Disclosures to consumers. (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to the effective date of the act except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

Section 11. There is a new R.C.M. section numbered 18-511 that reads as follows:

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18-511. Conditions of disclosure to consumer. (1) A consumer reporting agency shall make the disclosures required under section 18-510 during normal business hours and on reasonable notice.

(2) The disclosures required under section 18-510 shall be made to the consumer:

(a) in person if he appears in person and furnishes proper identification; or

(b) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(3) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 18-510.

(4) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

Section 12. There is a new R.C.M. section numbered 18-512 that reads as follows:

18-512. Procedure in case of disputed accuracy. (1) If the completeness or accuracy of any item of information contained in this file is disputed by a consumer, and the dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete the information and notify all users, of whom the consumer reporting agency has records, of the information's deletion. The users shall also delete the information.

(2) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(3) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof. The consumer reporting agency shall notify the consumer of all users, of whom it has records, who have the disputed information.

Section 13. There is a new R.C.M. section numbered 18-513 that reads as follows:

18-513. Disclosures to consumers. A consumer reporting agency

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shall make all disclosures pursuant to section 18-510 and section 18-512 to the consumer, with appropriate fees to be established by the department of business regulation, in accordance with the administrative procedure act.

Section 14. There is a new R.C.M. section numbered 18-514 that reads as follows:

18-514. Public record information for employment purposes. A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

Section 15. There is a new R.C.M. section numbered 18-515 that reads as follows:

18-515. Requirements on users of consumer reports. (1) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty (60) days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if

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he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2).

Section 16. There is a new R.C.M. section numbered 18-516 that reads as follows:

18-516. Actions available to consumer. (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this act.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant, is liable to suit.

(3) A person who furnishes information to a consumer reporting agency which is false, or who furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

Section 17. There is a new R.C.M. section numbered 18-517 that reads as follows:

18-517. Civil liability for willful noncompliance. Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this act with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amounts of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

Section 18. There is a new R.C.M. section numbered 18-518 that reads as follows:

18-518. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

Section 19. There is a new R.C.M. section numbered 18-519 that reads as follows:

18-519. Jurisdiction — venue. A consumer may bring suit in any district court in Montana.

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Section 20. There is a new R.C.M. section numbered 18-520 that reads as follows:

18-520. Rules. The department of business regulation shall enforce this act and promulgate rules necessary to carry out the intent of this act.

Section 21. There is a new R.C.M. section numbered 18-521 that reads as follows:

18-521. Violation. For the purposes of this act, a violation of this law would be in violation of chapter 4, Title 85, R.C.M. 1947.

Section 22. **Severability clause.** The provisions of this act are severable and if any part or provision thereof shall be held void, the decisions of the court so holding shall not affect or impair any of the remaining part of provisions of this act.

Approved May 13, 1975.

CHAPTER NO. 548

AN ACT TO ENCOURAGE INVESTMENT IN NONFOSSIL FORMS OF ENERGY GENERATION AND IN ENERGY CONSERVATION IN BUILDINGS THROUGH TAX INCENTIVES AND CAPITAL AVAILABILITY, AMENDING SECTIONS 84-202 AND 84-301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7401 that reads as follows:

84-7401. Statement of purpose. The purpose of this act is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. This act is not intended to require an assessor to revalue property except upon receipt of a properly documented and approved application. This act allows but does not require a public utility to extend credit for energy conservation investments.

Section 2. There is a new R.C.M. section numbered 84-7402 that reads as follows:

84-7402. Definitions. As used in this act:

(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building, or land, with or without improvements.

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(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy, or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Recognized nonfossil forms of energy generation" means a system for the utilization of solar heat, wind, solid wastes, or the decomposition of organic wastes, for capturing energy or converting energy sources into usable sources, for the production of electric power from solid wood wastes, and also means a small system for the utilization of water power by means of an impoundment not over twenty (20) acres in surface area.

Section 3. There is a new R.C.M. section numbered 84-7403 that reads as follows:

84-7403. Tax treatment of certain energy-related investments. (1) Upon application by a taxpayer, approved under section 84-7404, a capital investment by the taxpayer in a recognized nonfossil form of energy generation shall be treated by the department of revenue as:

(a) property exempt from taxation, to the extent the appraised value of the investment does not exceed one hundred thousand dollars ($100,000), or

(b) class seven property, as defined in sections 84-301 and 84-302, for such portion of the appraised value of the investment that exceeds one hundred thousand dollars ($100,000).

(2) Upon application by a taxpayer, approved under section 84-7404, a capital investment in a building by the taxpayer for an energy conservation purpose shall be treated by the department of revenue as class eight property, as defined in sections 84-301 and 84-302, to the extent the appraised value of the investment does not exceed twenty percent (20%) of the appraised value of the building in which the investment is made.

Section 4. There is a new R.C.M. section numbered 84-7404 that reads as follows:

84-7404. Application for special energy investment taxation. The department of revenue shall provide forms on which a taxpayer may apply for tax treatment under section 84-7403. Application shall be made to the department. The department shall approve an application which demonstrably promotes energy conservation or utilizes a recognized nonfossil form of energy generation. The department may refer an application involving energy generation to the department of natural resources and conservation for its advice, and the department of natural resources and conservation shall respond within sixty (60) days. The department may refer an application involving energy conservation to the department of administration for its advice, and the department of administration shall respond within sixty (60) days. The department of revenue may deny an application which it finds to be impractical or ineffective.

Section 5. There is a new R.C.M. section numbered 84-7405 that reads as follows:

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84-7405. Capital may be lent by utilities — tax credit for interest differential. (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of a rate of seven percent (7%) per year on the declining balance of the sum advanced.

(2) A public utility lending money under this section may compute the difference between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under section 84-1601 or for the corporation license tax under section 84-1501.

(3) The public service commission may make rules to implement this section.

Section 6. There is a new R.C.M. section numbered 84-7406 that reads as follows:

84-7406. Limitations. Tax treatment under section 84-7403 is limited to:

(1) capital investments made after January 1, 1975, and

(2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development, and

(3) a ceiling of one hundred thousand dollars ($100,000) in tax savings per year to any one person or firm.

Section 7. Section 84-202, R.C.M. 1947, is amended to read as follows:

"84-202. **Exemptions from taxation.** (1) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for

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the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(2) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(3) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(4) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(5) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403."

Section 8. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value

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of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator,

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warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under section 84-7403.

Class Eight. *(a)* Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class. For purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

(b) Any capital investment in a building for an energy conservation purpose, to the extent provided under section 84-7403.

Class Nine. All property not included in the eight (8) preceding classes."

Approved May 13, 1975.

CHAPTER NO. 549

AN ACT ESTABLISHING A PROCEDURE FOR THE ECONOMIC DEVELOPMENT OF MONTANA THROUGH LOCAL GOVERNMENTAL CONTROL, BASED ON LAND GROWTH PATTERNS ESTABLISHED THROUGH ECONOMIC VALUE AS A SUPPLEMENT TO ZONING WITH ECONOMIC INDUCEMENTS AND PENALTIES; PROVIDING AUTHORIZATION TO LOCAL GOVERNMENTS TO DEVELOP PLANNED DEVELOPMENT PROCEDURES; AND PROVIDING STANDARDS OF LAND USAGE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7501 that reads as follows:

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84-7501. Citation. This act may be cited as "The Montana Economic Land Development Act".

Section 2. There is a new R.C.M. section numbered 84-7502 that reads as follows:

84-7502. Policy. The legislature finds that we as a state are currently facing problems in our economic development that will not only cause concern to our state's future but also cutbacks in our state's growth and currently lack to proper development. Inasmuch as many of these economic concerns are based on land use decisions, the state should develop a land use policy which will direct Montana's land use growth through the enactment of a program which will:

(1) enable local control and local decisions to be foremost in determining the state growth pattern;

(2) allow taxation on land and structures to be based on proper land utilization; providing for tax incentives for proper land utilization and tax increases for land developmental abuse;

(3) create a land use policy which does not block economic progress, but rather the development of a program which will meet the social and economic standards necessarily brought about through economic progress;

(4) develop a program which protects our state's beauty and natural features as well as our heritage of agricultural wealth by curbing urban sprawl; and

(5) institute a land use system growth program which supplements zoning and which is structured through local control, and one which is not to be final in action, but rather one of continuing action, whereby land use decisions can continually be reevaluated and one which would curb unnecessary governmental regulations.

Section 3. There is a new R.C.M. section numbered 84-7503 that reads as follows:

84-7503. Purpose. Montanans are faced with a nation hungry for timber, coal, minerals, and recreation opportunities, causing a future in Montana whose heritage appears headed for rapid development and growth. This act, therefore, is designed to meet Montana's needs in a unique way; by reducing the need for zoning and other land control measures and placing our future development under a free market system controlled not by land regulation, but by economics. Specific goals are:

(1) to protect prime agricultural land as it is the backbone of today's Montana economy and the heart of tomorrow's need for a well-fed and healthy economy, keeping Montana's position, in the future, as the breadbasket of the nation;

(2) to encourage urban growth in an inward pattern, rather than a sprawl development, yet through the use of open space provide a greater percentage of open land and a higher density on developed land within the urban area;

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(3) to guide industrial and commercial development in Montana;

(4) to develop a program which is controlled and directed on a local level, within the actual land use direction and classification left wherever possible with the local land owner; and

(5) in general, to provide for Montana a land use directional policy which will not regulate our future but rather motivate it into a pattern of desirable economic growth based on the development of private enterprise.

Section 4. There is a new R.C.M. section numbered 84-7504 that reads as follows:

84-7504. Definitions. As used in this act:

(1) "Density" means the number of persons living on the land based on those established as residents per acre. In determining densities under the provisions of this act it shall be taken on the number of acres of the proposed development or portion of land developed plus the average density of the land adjoining the property and extending beyond it three hundred (300) feet in each direction.

(2) "Agricultural land" means land which is currently being used or could be used for floriculture, horticulture, silviculture, general farming, dairying, poultry raising, stock raising, and other agricultural related uses, including, but not limited to, buildings and activities as defined by section 84-437.2.

(3) "Developed land" means land developed or used for residential, industrial or commercial use.

(4) "Urban land" means land which is developed for the purpose of providing community or regional trade centers, whether incorporated or unincorporated, generally considered commercial centers as defined by the local governing body.

(5) "Productive land" means land that could be used for agricultural purposes for a profit following current land management practices in the following use categories:

(a) irrigated cropland;

(b) non-irrigated cropland;

(c) pasture;

(d) range;

(e) irrigated native grassland;

(f) forest and woodland.

For purposes of determining whether the land could be used for a profit, the nonagricultural development value of the land shall not be considered.

(6) "Nonproductive land" means land which will not support growth for the production of food and fibre for profit.

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(7) "Open space" means land which is dedicated or preserved for

(a) park or recreational purposes,

(b) historic or scenic purposes, or

(c) assisting in the shaping of the character and direction of community development.

(8) "Planned development" means the development of a piece of land in such a manner that is determined by the governing body to entail the highest and best possible development for that land, in a manner encouraging open space and high density use.

(9) "Governing body" means the board of county commissioners or the city council of incorporated cities in which the land lies. If the land under question is in more than one (1) county, the governing body of each county shall be represented by one (1) or more of their membership on a regional basis, and in equal numbers from each county.

(10) "Industrial land" refers to land the use of which shall be for the manufacturing, conversion, or wholesaling of a material or product into a secondary usage for sale or profit. Specific uses shall include manufacturing, processing, dismantling, refining, production, and mining.

(11) "Recreational land" means land or portions of land primarily designated as space for outdoor activities conducted by individuals for fun and relaxation, including, but not limited to, organized sports, games, hunting, fishing, hiking, backpacking, swimming, and other related outdoor activities.

(12) "Residential land" refers to a district or portion of land in which the principal use of the land is for residential dwellings of varying densities designed to meet contemporary building and living standards.

(13) "Taxable value or value" means that value determined under Title 84, R.C.M. 1947, for land and improvements.

(14) "Construction period" means that period beginning with the issuance of a building permit, or in the case where building permits are not granted, the breaking of ground for construction purposes.

(15) "Economic benefit" means the development of, or expansion of, an existing facility which through the provision of jobs or new taxable base, provides additional economic opportunity within an area for the citizens of the state and its owners.

(16) "Budget period" means the period of time, from the start to finish of a growing season for agricultural land, or the construction period in the case of a new or remodeled construction.

(17) "State administrating agency" means the department of community affairs and the department of revenue acting jointly to administer this act. All planning functions required to implement section 84-7505 shall be assigned to the department of community affairs and all taxation responsibilities relating to classifications for tax purposes shall be assigned to the department of revenue.

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(18) "Roll back" means the rolling back of a period of years for tax purposes. The taxes to be paid during this roll back period being the difference paid from the normal appraisal value and the appraised value determined by this act.

(20) "Single family" is a designation given to residential land whereby only one (1) family lives in each structure erected or existing upon the land.

(21) "Multifamily" is a designation given to residential land whereby more than one (1) family lives in each structure existing, remodeled, or built upon a given piece of land.

(22) "Remodeling" means the changing in value of a structure, building, or other man-made object either through painting, reconstruction, or other manner wherein its value is increased one percent (1%) or more, said increase in value to be determined by the governing body after the proposed change or alteration is made.

(23) "Commercial land" means land used for business purposes other than land herein defined as agricultural land, industrial land, residential land, and recreational land.

Section 5. There is a new R.C.M. section numbered 84-7505 that reads as follows:

84-7505. Operation. (1) Within two (2) years of the passage of this act the governing body shall set standards wherein their jurisdictional area is classified into general areas described in this section unless the existing classification system conforms to the provisions of this act. The preparation of a plan by the governing body shall be made after the following steps have been taken regarding the lands in their jurisdictional areas:

(a) a complete inventory of the land and its usage by the governing body, including:

(i) land types, based on federal standards;

(ii) the floodplain of all streams and rivers;

(iii) current vegetation patterns, i.e., cropland, irrigated land, rangeland, nonproductive land;

(iv) developed land; and

(v) all federal, state, or Indian land.

Decisions shall be coordinated with the department of revenue.

(2) After collection of this data it shall be displayed in public for a minimum of thirty (30) days. During the period the material is displayed there shall be notification made of a public meeting at which time the materials will be displayed, described, and the method of classification will be explained to the general public. Any changes of land classification suggested shall be taken under advisement by the governing body and at their discretion be encompassed into the land classification.

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(3) Within one hundred twenty (120) days of the adoption of the plan the governing body shall indicate on a map the proposed land categories in their jurisdictional area and so notify all land owners in the jurisdictional area, by registered mail. This notification shall include, but not be limited to:

(a) the classification, or classifications, given the individual land owners' land;

(b) the meaning of the classification; and

(c) a time and place for a hearing to be held, within thirty (30) days of notice for purposes of discussing the general classification(s).

(4) Following the public meeting the governing body may or may not reclassify any land in accordance with requests made at the meeting.

(5) A final land use plan shall then be prepared by the governing body, which plan shall reflect a combination of existing uses of land in a manner which through prudent use encompasses both growth and conservation. This plan shall then be submitted to the state administration agency not later than January 2, 1978. If a city or county has failed to prepare this plan within the required time, the department of community affairs or its agent shall prepare the plan.

(6) In preparing the plan, the following categories shall be used:

(a) agricultural;

(b) recreational;

(c) residential;

(d) commercial;

(e) industrial; and

(f) open space.

Section 6. There is a new R.C.M. section numbered 84-7506 that reads as follows:

84-7506. County option. After the provisions of section 84-7505 have been complied with and all public hearings held, the local governing body may proceed directly into further implementation provided in section 84-7507 or hold an election of electors within the affected land area. If the voters reject further implementation of the classification plan, the plan may not be implemented and no new election on that plan or any other plan may be held for the period of one (1) year.

Section 7. There is a new R.C.M. section numbered 84-7507 that reads as follows:

84-7507. Classification. The department of revenue shall conduct hearings upon the classifications of land according to desirable use proposed by each governing body within the county and shall, after considering the record of such hearings, make the final classification of the desirable usage of land in each county as proposed by the governing body if such proposals are in accordance with the following criteria:

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(1) Taxable land shall be classified as agricultural when such action would:

(a) encourage the preservation of prime agricultural soils, or

(b) encourage the preservation of those limited areas of the state which contain the proper combination of soil and topographical characteristics necessary for intense agricultural development, or

(c) discourage those uses and activities which are incompatible with the rural character of a district, or

(d) provide minimal development standards which would assure the continuation of the open and rural character of the district and permit only those uses and activities which are compatible with this rural character.

(2) Taxable land shall be classified as recreational when such action would:

(a) discourage those uses and activities which would create congestion, noise, or hazards incompatible with recreation activities established on the land, or

(b) encourage the continuation or initiation of outdoor recreation on suitable lands.

(3) Taxable land shall be classified as residential when such action would:

(a) conserve the character of established residential neighborhoods as has been done by municipal zoning, or

(b) encourage the growth of cities and towns in efficient patterns while discouraging wasteful urban sprawl, or

(c) open new lands to residential areas provided such usage is accompanied by utility expansion, streets, and other needed and related facilities such as schools and commercial developments, if such development is considered necessary by the governing body.

(4) Taxable land shall be classified as industrial when such action would:

(a) be in character with existing uses, or

(b) shield the surrounding area from noise, glare, pollution, or other actions or activities objectionable to the general public, or

(c) provide areas of land contiguous rather than spread over the community or area and located in such locations where the prevailing wind and water flow pattern is favorable to the inhabitants of the area.

(5) Taxable land shall be classified as commercial when:

(a) it would be in character with existing uses, or

(b) it is located in such a pattern or manner to provide needed services to a growing community, or

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(c) its highest and best use is determined to be commercial, said usage being based on decisions of mutual advantage of both customers and merchants, or

(d) when the classification of the land will promote the most desirable developments in each area, conserve the value of land, and thus promote public safety, convenience, prosperity, and welfare.

(6) Taxable land may be taken from the tax base and classified open space, whether public or private, when:

(a) it is to the public benefit to provide for the preservation of permanent open space, green belts, or similar landscape features, or

(b) such action will provide land to screen or otherwise hide through visual control objectionable man-made features, or

(c) such action will provide land to encourage, assist, and provide means for more desirable urban and rural developments.

(7) Such classifications of desirable use shall be accepted by the department of revenue.

Section 8. There is a new R.C.M. section numbered 84-7508 that reads as follows:

84-7508. Management of classified area. Once land is classified into a taxable classification, it shall be managed by the governing body to encourage its continued usage in that classification. Changes in classification shall be subject to review by the department, however, the department cannot override the decision of the governing body either in connection with such changes or in connection with the original classification pursuant to section 84-7507, without cause. Items for cause are:

(1) that the intended use in the reclassification of agricultural land would not be to the benefit of the general community because it would not:

(a) assure that those portions of the state containing prime agricultural soils would be preserved for agricultural purposes, or

(b) encourage the use and preservation of those limited and irreplaceable portions of the state which contain the proper combination of soil and topographical characteristics for intense agricultural development.

(2) That the intended use in the reclassification of recreational land would not be to the benefit of the general community because it would not:

(a) protect recreational development, so far as is possible and appropriate in each area, against the establishment of uses which would create hazards, offensive noise, or offensive activities, or

(b) protect existing recreational development against congestion, so far as is possible and diminish its effectiveness as a recreational unit.

(3) That the intended use by reclassification of residential land would not be to the benefit of the general community because it would not:

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(a) encourage the construction of, and the continued use of, the land for various residential purposes, if in fact this was its best and natural usage, or

(b) prohibit commercial and industrial uses of the land and to prohibit any other use which would substantially interfere with the development or continuation of residential uses, or

(c) prohibit any use which because of its character or size creates requirements and costs for public services, such as police and fire protection, water supply and sewage facilities, substantially in excess of such requirements and costs if the district were developed solely for residential purposes.

(4) That the intended use by reclassification of any land category to industrial land would not be to the benefit of the general community because its reclassification would not:

(a) provide facilities to minimize traffic congestion, or

(b) provide for facilities and the operation of industries which minimize noise, glare, air pollution, water pollution, and fire and safety hazards in industrial districts, or

(c) provide beneficial, social, and economic pattern of growth for the area in which the land so classified occurs, or

(d) provide protection from offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable influences.

(5) That the intended use by reclassification of any land category to commercial land would not be to the benefit of the general community because its reclassification would not:

(a) provide protection from offensive noise, vibration, smoke, and heavy traffic, or

(b) provide sufficient space in appropriate locations for the transaction of all types of commercial and miscellaneous service activities in beneficial relation to one another, and thus to strengthen the economic base of the community, or

(c) provide appropriate space, and in particular sufficient depth from the street, to satisfy the needs of modern commercial development, including the need for off-street parking in areas where a large proportion of customers come by automobile, or

(d) encourage the tendency of commercial development to concentrate, to the mutual advantage of both customers and merchants, and the urban pattern of growth.

(6) Once classified as open space, no land so classified may be reclassified until the provisions of section 62-605 have been met.

Section 9. There is a new R.C.M. section numbered 84-7509 that reads as follows:

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84-7509. Subclassification of land. Under the provisions of this act the land outside the jurisdictional boundary of a city or town, which is classified either agricultural or recreational may be subclassified by the owner subject to the terms of sections 84-7510 and 84-7511.

Section 10. There is a new R.C.M. section numbered 84-7510 that reads as follows:

84-7510. Subclassification by owners of taxable land classified as agricultural. (1) Within two (2) years following the classification of taxable land as agricultural, an owner thereof shall elect to subclassify his lands into classes A, B, C, or D, or any combination thereof. The department of revenue, upon receipt of the owner's election, shall revise the previously appraised value of such lands as follows:

Class A — appraisals shall be reduced twenty percent (20%) from their levels immediately preceding the classification;

Class B — appraisals shall be reduced ten percent (10%) from their levels immediately preceding the classification;

Class C — appraisals shall be reduced two percent (2%) from their levels immediately preceding the classification;

Class D — appraisals shall be increased ten percent (10%) from their levels immediately preceding the classification, and may be revalued in future years as provided by law to reflect market value.

(2) The owner of class A land, his heirs, successors, or assigns, may not convert the use of such lands to any nonagricultural purpose for twenty-five (25) years, nor may the subclassification be changed for twenty-five (25) years.

(3) The owner of class B land, his heirs, successors, or assigns, may not convert the use of such land to any nonagricultural purpose for ten (10) years, nor may the subclassification be changed for ten (10) years.

(4) The owner of class C land, his heirs, successors, or assigns, may change the subclassification within the agricultural classification at any time, and may petition the department of revenue at any time for reclassification into another subclassification. The department may grant this petition provided that if the subclassification is to class D, it shall not be granted until the petitioner has first paid the difference in taxes which would have been paid since the subclassification or ten (10) years, whichever is less, if during that period the land had been subclassified as class D.

(5) The owner of class D land, his heirs, successors, or assigns, may petition the department of revenue for reclassification into another category at any time, which petition shall be granted.

(6) If a voluntary subclassification of land has not been made by the owner of record within the two (2) year period, the department of revenue shall automatically place the land in class D and it shall remain in this classification unless before placing it in class D the owner of the land requests assistance from the local planning authority or the department

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of community affairs in determining which subclassification to elect. If this request is made by the owner of record the land will not be classified D until thirty (30) days after such assistance is provided by the local planning authority or department of community affairs.

Section 11. There is a new R.C.M. section numbered 84-7511 that reads as follows:

84-7511. Subclassification by owners of taxable land classified as recreational. (1) Within two (2) years following the classification of taxable land as recreational, in the event the land also qualifies as agricultural land, an owner thereof shall elect to subclassify any or all of his lands into class A, class B, or a combination of the two.

(2) The department shall appraise class B lands at their market value as recreational lands.

(3) The department of revenue, upon receipt of the owner's election, shall reduce the previously appraised value of class A lands by twenty-five percent (25%) and shall thereafter maintain such appraisals at seventy-five percent (75%) of the value of the land so long as it remains class A.

(4) The owner of class A land, his heirs, successors, and assigns, shall agree with the department of fish and game for a minimum of ten (10) years to permit public access across the land for outdoor recreational purposes, subject to such reasonable limitations for the protection of the land and the privacy of the persons residing thereon as the owner may stipulate. If this agreement or a renewal thereof is not in force, the subclassification of the land reverts to class B. The owner of class A recreational land, his heirs, successors, and assigns may not change the use of such land to any purpose incompatible with established recreational uses during the term of an agreement with the department of fish and game.

(5) The owner of class B land, his heirs, successors, and assigns, shall agree that in addition to meeting the standards of subsection (4) of this section, they further would agree to allow public camping and overnight stay upon their property in designated locations without charge.

(6) The department of revenue, in addition to any other tax schedule placed on the land, shall reduce the previously appraised value of class B land by forty percent (40%) and shall thereafter maintain such appraisals at sixty percent (60%) of the value of the land so long as it remains class B.

Section 12. There is a new R.C.M. section numbered 84-7512 that reads as follows:

84-7512. Valuation of residential land. After classification as residential land, whether occupied or not, the land shall not change in value for tax purposes unless it meets or is governed by the following provisions:

(1) Class A — existing residential. Tax valuation changes shall be made in the following manner:

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(a) If the existing usage is expanded or remodeled to expand land densities to a level ten percent (10%) higher than the property surrounding that expanded or remodeled based on a measurement of nine hundred (900) feet from the property line of the piece of property being expanded or remodeled, then the conditions of class C new residential (multifamily) shall be followed.

(b) If existing residential property is remodeled to increase its valuation, the total valuation shall be reduced for the first five (5) years after the remodeling commencing in the amount of the remodeling costs the first year and, reducing in an amount of twenty percent (20%) per year for each remaining year in the five (5) year period.

(c) Residential land whose usage is altered to one other than residential shall be valued at forty percent (40%) over the normal valuation for that usage in the state, unless the change is approved by the governing body. This increase shall apply for the first ten (10) years, after which no additional tax shall be levied. If said improvement is approved by the governing body, it shall be taxed as described in subsection (3) of this section.

(d) If residential land is transferred from this category to any class of agricultural land, after the enactment of this act, there shall be an immediate reduction of value to the appropriate subclassification of the land into which the transferred land is reclassified.

(2) Class B— new residential (single family). Any land which is converted to new residential shall be evaluated as follows:

(a) Land transferred from productive land shall be valued in accordance with the appropriate sections of this act with the following exceptions:

(i) Land indicated as a planned unit developed and approved by the governing body shall be classified for tax purposes at ten percent (10%) below the normal valuation in the area for similar developments.

(ii) Land transferred from nonproductive land to residential purposes shall be evaluated at the time of transfer in an amount to decrease the tax valuation as follows:

Land within the jurisdictional 4 ½ mile limit of a community	20% a year for a period of 5 years
Land between 4 ½ miles and 10 miles from the jurisdictional limit	10% a year for a period of 5 years
Land beyond 10 miles, measured from the (4-½) mile limit of the nearest incorporated city in a direct line	5% a year for a period of 5 years

(iii) Land taken out of production and transferred to residential shall, in addition to any other provision of this act, be increased in taxable valuation in the following amounts:

Land within the jurisdictional 4 ½ mile limit of a community	2% a year for a period of 10 years
Land between 4 ½ miles and 10 miles from the jurisdictional limit	10% a year for a period of 10 years
Land beyond the 10 mile limit, measured from the nearest incorporated city in a direct line	25% a year for a period of 10 years

(3) Class C - new residential (multifamily). Land which is transferred from any use to multifamily other than planned unit development or recreational developments as approved by the governing authority in addition to any other provision of this act shall be valued as follows:

Existing Density	Change in Density	Increase (Decrease) in Appraised Value
0 — 1	+50%	+50%
1 — 3	+40%	+25%
3.1— 9	+30%	+25%
9.1—18	+10%	+ 2%
Over 18	No change	No change

(4) Class D - commercial land. Land converted to commercial development within the classification of residential land shall be, in addition to any other portion of this act, valued as follows:

Existing Density	Change in Density	Increase (Decrease) in Appraised Value
0 — 1	+20%	+10%
1 — 3	+10%	+ 5%
3.1— 9	+ 5%	+ 2%
9.1—18	No change	No change
18.1—36	−10%	− 5%
36.1—54	−15%	−10%
54 and over	−25%	−15%

Section 13. There is a new R.C.M. section numbered 84-7513 that reads as follows:

84-7513. Valuation of commercial land. After classification as commercial, land, whether occupied or not, shall not change in value for tax purposes unless it meets or is governed by the following provisions:

(1) Class A - open undeveloped land. Open undeveloped land within the boundaries set as commercial land which has value and is not designated for usage as a parking area or park, and developed as such within two (2) years from the effective date of this act, shall be subject to taxation in the following method (after the two (2) year grace period):

1st year taxation — 1% over valuation existing at the beginning of the said two (2) years;

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2nd year taxation —+ 2% over the previous year's valuation;
3rd year taxation —+10% over the previous year's valuation;
3-5 years taxation—+20% over the previous year's valuation;
Over 5 years —+30% over the previous year's valuation.

(2) Class B - existing improved land. All land in a commercial class shall remain in the same taxable base until expanded or remodeled. No expansion or remodeling shall occur without approval of the governing body.

Upon remodeling or improving, it shall receive a reduction in valuation in the amount of its valuation change which shall apply as a reduction in valuation of the property for a period of five (5) years, commencing in the amount of the cost of remodeling or improving in the first year and reducing in an amount of twenty percent (20%) per year for each remaining year thereafter.

(3) Class C - existing improved land. Existing structures and buildings shall be frozen in their existing tax base for a period of ten (10) years, unless remodeled, where section 12(1)(a) shall apply. If not remodeled after ten (10) years, the following shall apply:

Age of structure in years	Tax increase according to the years since remodeled last			
	1-5 years	5-10 years	10-15 years	15 years and over
10—12	1%	2%	4%	5%
12—15	2%	4%	6%	8%
15—20	4%	8%	12%	16%
21—25	10%	12%	16%	18%
26—30	15%	18%	20%	24%
31—40	25%	28%	30%	35%
40—50	40%	45%	50%	60%
50—Over	50%	60%	75%	100%

(4) Class D - new improved land.

(a) The construction cost and land cost of any commercial development within a classified commercial or residential area shall not be taxed for its construction period.

(b) Following the nontaxable period the total cost of land and improvements developed as new commercial property shall be taxed as follows:

Commercial land location	Taxable schedule
(i) Land within and extending nine hundred (900) feet beyond that area designated by the governing authority as the central business district of a community.	Improvements shall be taxed in additional increments as follows: A ten percent (10%) increase in valuation per year until a total value for tax purposes is one hundred percent (100%) of value.

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(ii) Land from that designation under subsection (4) (b) (i) to the corporate boundary or city limits.	Improvements shall be taxed in additional increments as follows: A thirty-three and one-third percent (33 ⅓%) increase in valuation per year until a total value for tax purposes is one hundred percent (100%) of value.
(iii) Land lying from the corporate boundary to the four and one-half (4 ½) mile limit.	An increase in taxes over the normally assessed value of ten percent (10%) per year for a period of ten years unless given a waiver by the governing authority.
(iv) Land lying beyond the four and one-half (4 ½) mile limit.	An increase in taxes over the normally assessed value of twenty-five percent (25%) per year for fifteen (15) years unless given a waiver by the governing authority.

Section 14. There is a new R.C.M. section numbered 84-7514 that reads as follows:

84-7514. Valuation of industrial land. After being classified as industrial, land, whether occupied or not, shall not change in value for tax purposes unless it meets or is governed by the following provisions:

(1) Class A (existing industrial land). Tax valuation changes shall be made in the following manner:

(a) Class A - all lands existing at the passage of this act, in a category of developed land, which lands are to continue in their existing tax categories for ten (10) years, and which, at the end of ten (10) years, if not remodeled or cleared, are to be taxed according to commercial land class C;

(b) Class B - those lands which expand an existing facility either through the remodeling or through a value increase of 10% or more from its approved value of an existing location or the acquisition of land to expand an existing facility, or both, meeting the following requirements, shall be so classified:

(i) when the expansion has no unfavorable or adverse effects on the property surrounding the facility, and

(ii) when the immediate cost of additional local services will be covered by the tax impact of the facility, or the expanded facility will meet these needs by its own resources, and

(iii) when the new facility will create new economic opportunities for those living in the community, and

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(iv) when the new facility will not have an adverse effect on natural resources or scenic characteristics of the area, and

(v) when the development has been planned for and coordinated with the governing body.

(c) Class C - those lands and/or facilities which when remodeled or expanded will:

(i) cause a tax burden in the community because the expansion will require added community services to meet the impact,

(ii) not cause an unfavorable or adverse effect on the community,

(iii) the impact causes an increase in population by adding one percent (1%) or more population measured in a fifty (50) mile radius from the point of expansion, or

(iv) provide needed and desired economic impact in the community.

(d) Class D — those lands and/or facilities which when remodeled or expanded will:

(i) cause a tax burden on the community because the expansion will require additional community services to meet the impact,

(ii) cause an unfavorable or adverse effect on the community, or

(iii) cause an increase in population by adding one percent (1%) or more population to the community when measured in a fifty (50) mile radius from the point of expansion.

Section 15. There is a new R.C.M. section numbered 84-7515 that reads as follows:

84-7515. Taxation of classified industrial land. Within one (1) year after the expansion of existing industrial property into land not presently classified as industrial land, dating from the termination of the construction period the following valuation changes shall be made on the values of the land and improvements:

Location	Industrial Classification			
	CLASS A	CLASS B	CLASS C	CLASS D
Agricultural	0	+10	+ 30	+100
Recreational	+50	+75	+100	+200
Residential	0	+10	+ 30	+100
Commercial	−25	−10	0	+ 50
Industrial	−50	−25	− 10	+ 25

Expansion into open space shall not be permitted.

Section 16. There is a new R.C.M. section numbered 84-7516 that reads as follows:

84-7516. New idustrial land. New industrial land which will be of economic benefit to Montana shall be taxed and classified as follows:

(1) Class A. This classification of land shall be for those new facilities which meet the following standards:

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(a) An area which is planned for orderly development and has through its study shown the governing body it will meet the following minimum standards:

(i) It would have sufficient water available for its foreseeable needs.

(ii) It would not have significant adverse effects on the natural environment and would not cause undue air or water pollution.

(iii) It would not adversely affect existing land uses, scenic characteristics, natural resources or property values.

(iv) It would have or provide adequate sewage and solid waste disposal facilities.

(v) It would have, as already established, within a community, or provide if needed, to meet the following facilities to meet its anticipated population influx into the community:

(A) school, hospital and other social needs;

(B) street or highway development;

(C) parks, playgrounds and recreation developments;

(D) housing or areas for housing development;

(E) shopping facilities or see that another source develops adequate facilities to meet minimum needs.

(2) Class B. This classification of land or usage shall be for those new facilities which meet the following standards:

(a) An area which is planned for orderly development and has through its study shown the governing body it will meet the following minimum standards:

(i) It would have sufficient water available for its foreseeable needs.

(ii) It would not have significant adverse effects on the natural environment and would not cause undue air or water pollution.

(iii) It would have as already established within a community, or provide if needed, to meet the following facilities to meet its anticipated population influx into the community:

(A) school, hospital and other social needs;

(B) street and/or highway development;

(C) parks, playgrounds and recreation developments.

(3) Class C. This classification of land or usage shall be for those new facilities, which plan for the orderly growth, but make no attempt to meet proposed needs.

(4) Class D. This classification or usage governs that new usage which does not attempt to meet proposed needs, or provide a development plan accepted by the governing body.

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Section 17. There is a new R.C.M. section numbered 84-7517 that reads as follows:

84-7517. Taxation and classification of new industrial land. After the termination of the construction period of a new industrial facility the following adjustments in valuations shall be made. The adjustments are in addition to current evaluation standards. Classification prior to location of facility means the classification existing prior to any attempt to obtain a variance without a change in the boundary under section 84-7523 for the location of that particular facility.

Location of Facility	Classification Prior to Industrial Land Classification			
	CLASS A	CLASS B	CLASS C	CLASS D
Agricultural	+25	+35	+75	+100
Recreational	+25	+45	+85	+125
Residential	+10	+20	+50	+ 75
Commercial	−25	−15	+25	+ 50
Industrial	−50	−25	+10	+ 25

New construction on open space shall not be permitted.

Section 18. There is a new R.C.M. section numbered 84-7518 that reads as follows:

84-7518. Open space. After classification, any classified usage may be reclassified into open space for the following purposes:

(1) To assist in developing green belts and providing needed open space both the private sector and the public, may acquire or dedicate open space. If open space is acquired by the governing body, it must be:

(a) essential to the orderly growth and development of the area;

(b) in accordance with the program of comprehensive planning for the area at the time of its creation; and

(c) in accordance with the provisions of Montana law.

(2) Open space may be acquired by the governing body by purchase, trade or other means available other than condemnation. Once land is classified as open space, it must remain as such until it is determined by the governing body to be out of phase with the master plan, at which time the land may be traded for a feasible equivalent. Open space land dedicated under this act, once declared, either by the governing body or the public, may not be sold unless it meets the provisions of section 84-7519.

Section 19. There is a new R.C.M. section numbered 84-7519 that reads as follows:

84-7519. Taxation of open space. Open space shall be taxed in the following manner:

(1) If a private owner dedicates land as open space, it will remain off the tax base.

(2) Open space land dedicated in any agricultural zone may be used

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for agriculture as directed by the governing body, by the original owner dedicating the land and any successors in interest.

(3) No owner may classify more than ten percent (10%) of his land open space without the permission of the governing body, however, he may place any amount into recreational land as defined by this act.

(4) If timberland is removed from the tax base through this classification, it may not be harvested for profit and may be cut only for the advancement of recreational purposes.

(5) Once open space is created, acquired or classified, the owner of record must maintain the property or the open space classification may be withdrawn by the local governing body.

(6) Upon approval by the local governing body, open space may be transferred to a new use provided a payment of twice the amount of tax benefit while the land was classified as open space is paid to the local governing body.

Section 20. There is a new R.C.M. section numbered 84-7520 that reads as follows:

84-7520. Special conditions.

(1) Any land classified under this act may be, at the owner's option, reclassified at any time to a new classification within categories if allowed under the requirements of that classification as set forth in this act.

(2) Any increases in taxation to pay for the loss of revenue caused by this act shall be reflected in an increase in mill levies and not in an increase in the valuation of specific property.

(3) Any property under one (1) or more ownerships may be so classified as to meet one (1) or more of the standards of this act.

(4) Hospitals, churches, rest homes, nursing homes, governmental buildings, schools, colleges, or any charitable institution operating on a nonprofit basis under section 84-202, may be located in any area of land so classified by this act, with the exception of recreational or open space classification.

Section 21. There is a new R.C.M. section numbered 84-7521 that reads as follows:

84-7521. Rules and regulations. The state administrating agency shall adopt such rules and regulations pursuant to Montana Administrative Procedure Act, as are necessary for the administration of this act.

Section 22. There is a new R.C.M. section numbered 84-7522 that reads as follows:

84-7522. Exemptions from act. Application to those over sixty-two (62) years of age and to those existing below poverty standards. No provision of this act which has a negative or adverse taxation effect shall apply to a private residence owned by a person or persons over sixty-two (62) years of age or those in an income bracket established by the federal government to be below poverty standards.

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Section 23. There is a new R.C.M. section numbered 84-7523 that reads as follows:

84-7523. Changes in boundaries. After final adoption of a plan, the governing body, or any property owner may petition for a variance or a change in the boundary of any land use classification. Within ten (10) days of receipt of the petition, the governing body shall forward a copy of the petition to the affected municipal, regional, or county planning organization and the appropriate state agencies. After sixty (60) days but within one hundred twenty (120) days of the receipt of a petition, the governing body shall advertise a public hearing to be held in the county, and serve notice on the persons and agencies that have an interest in the subject of the petition, at least ten (10) days prior to the hearing date.

No petition shall be approved unless the petitioner submits proof that the area is needed for a use other than that for which the land is classified, and the following requirements have been fulfilled:

(1) The land is usable and adaptable for the use for which it is proposed to be classfied or that a new use of the land would be more beneficial to the area; and

(2) Conditions and trends of development have so changed since the adoption of the existing classification, that the proposed classification is reasonable and desirable, and the land is capable of sustaining the use proposed; and

(3) That the proposed change shall offer the community relief from impact from an outside or uncontrollable influence facing the community because of new and substantial development.

Should the governing body approve the change in classification, it shall modify the existing land use plan to reflect such changes and change any taxable valuations as may be necessary.

Section 24. There is a new R.C.M. section numbered 84-7524 that reads as follows:

84-7524. Nonconforming uses. The lawful use of land or buildings existing on the date of establishment of any classification provided for under this act may be continued although the use does not conform to this act.

Section 25. There is a new R.C.M. section numbered 84-7525 that reads as follows:

84-7525. Reappraisal by department. The appraised value of property shall always include any increases or decreases determined by the department of revenue pursuant to a reclassification plan adopted under its authority. Any increases or decreases in value specifically provided for under the terms of this act shall be made after consideration of all such reappraisals.

Section 26. **Severability.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances, is not affected.

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Section 27. There is a new R.C.M. section numbered 84-7526 that reads as follows:

84-7526. Effective dates. No portion of this act shall become effective until the provisions of section 84-7505 have been met except for those portions of land classified under the provisions of Title 11, chapter 27, R.C.M. 1947, into categories which are consistent with the provisions of this act, and as to those portions of land this act shall be effective on January 1, 1976. All appraisals and classifications made thereafter shall be made pursuant to the provisions of this act.

Approved May 13, 1975.

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APPROPRIATIONS

ENACTED BY THE

Forty-fourth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1975

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APPROPRIATIONS

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-FOURTH LEGISLATURE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. One million six hundred thirty four thousand one hundred eighty six dollars ($1,634,186) is appropriated from the general fund for the operation of the forty-fourth legislature.

Section 2. This act is effective on passage and approval.

Approved January 11, 1975.

HOUSE BILL NO. 40

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1977, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this act:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, university system, board of institutions, and other entities or instrumentalities of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing and major repair projects authorized in this act.

Section 2. The following money is appropriated from indicated accounts and funds to the director, department of administration, for the biennium ending June 30, 1977, for the indicated capital projects:

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	For the Biennium Ending 6/30/77
ADMINISTRATION, DEPARTMENT OF	
Additional funds to remodel and add to the Mitchell Building	
06142 Long-Range Building Program BPICA	$100,000
FISH AND GAME, DEPARTMENT OF	
Additional funds to construct new office building at Helena	
06142 Long-Range Building Program BPICA	50,000
02131 Fish and Game Earmarked Revenue Account	40,000
INSTITUTIONS, DEPARTMENT OF	
Additional funds to construct new patient dormitory building at Warm Springs State Hospital	
06142 Long-Range Building Program BPICA	270,000

Section 3. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. This act is effective on its passage and approval.

Approved January 18, 1975.

HOUSE BILL NO. 60

AN ACT APPROPRIATING MATCHING FUNDS FOR FAMILY PLANNING PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is appropriated the sum of forty thousand dollars ($40,000) for the biennium ending June 30, 1977, twenty thousand dollars ($20,000) each year thereof, from the general fund to the state department of health and environmental sciences. The purpose of this appropriation is to contract with the department of social and rehabilitative services to provide comprehensive family planning services under Titles IV-A and XX of the Social Security Act. This appropriation is made subject to the receipt of matching federal funds for the same purpose from the department of health, education, and welfare, and if such federal money does not become available, this appropriation shall revert to the general fund.

Section 2. No funds appropriated hereunder may be used to furnish contraceptives to an unemancipated minor without the consent of the parent or parents or legal guardian of such minor.

Approved April 18, 1975.

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HOUSE BILL NO. 141

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF ADMINISTRATION FOR THE PURPOSE OF REIMBURSING LEWIS AND CLARK COUNTY FOR THE COSTS OF A GRAND JURY AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is appropriated from the general fund the sum of two hundred thousand dollars ($200,000) to the department of administration for the purpose of reimbursing the county of Lewis and Clark for costs actually incurred by the county for a grand jury summoned at the request of the attorney general to investigate the division of workmen's compensation. The treasurer of Lewis and Clark county may present verified claims to the department of administration for each expense incurred by his county under section 95-1405, subsection (f), and the department of administration shall pay such claims from the moneys appropriated by this act. Such county expenses may be accumulated and presented to the department monthly as a single claim. Any moneys remaining after the grand jury has been dissolved and all expenses of the grand jury paid shall revert to the general fund of the state.

Section 2. Any unexpended funds as of June 30, 1975, are hereby appropriated for the biennium ending June 30, 1977.

Section 3. Any expenses incurred in excess of this appropriation shall be the obligation of Lewis and Clark county.

Section 4. This act is effective on passage and approval.

Approved February 11, 1975.

HOUSE BILL NO. 264

AN ACT APPROPRIATING MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of the executive branch, offices of the judicial branch, and offices of the legislative branch of state government.

(2) "Approving authority" means the governor, or his designated representative, for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; or the appropriate legislative committees for legislative branch agencies, unless otherwise provided by law.

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Section 2. An agency may request and the approving authority may approve a budget amendment to:

(1) obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund and other than receipts to the state from the United States government made available under the provisions of the State and Local Fiscal Assistance Act of 1972; or

(2) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(3) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium. All requests for budget amendments shall be submitted through the budget director.

Section 3. In approving a budget amendment, the approving authority shall certify:

(1) specific additional services to be provided as a result of a higher expenditure level;

(2) that no other alternative is available to provide the additional services;

(3) that the additional proposed services have not been considered and rejected by the legislature; and

(4) that no commitment, implied or otherwise, is made for increased future general fund support.

Section 4. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unexpended balance of any appropriation shall revert to the fund from which it was appropriated.

Section 5. Expenditures shall not exceed appropriations except as otherwise provided in this act.

Section 6. Each department, agency and program of the executive branch shall submit to the budget director by July 1 of each fiscal year a detailed budget within the limits of the appropriation which includes the position and salary of each employee. Expenditures shall be made only in accordance with budgets approved by the budget director for executive branch agencies; by the chief justice of the supreme court for judicial branch agencies; and by the appropriate legislative committees for legislative branch agencies.

Section 7. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the 44th Legislature, unless a budget amendment has been approved by the appropriate approving authority.

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Section 8. All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 9. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) the legislative branch;

(3) public schools;

(4) the judicial branch; or

(5) salaries of elected officials, during their term of office.

Section 10. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 11. The provisions set forth in this section are limitations on the appropriations made in this act, provided, however, that these limitations do not apply to the distribution of public funds under the superintendent of public instruction. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials, and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against non-general fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury pursuant to provisions of Title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any agency subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

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Section 12. The following moneys are appropriated for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
DEPARTMENT OF FISH AND GAME		
Centralized services program		
From the earmarked revenue fund		
02131 Fish and game ERA	$1,429,333	$1,498,872
From the federal and private revenue fund		
04940 Recreation FPRA	53,378	56,444
Environment and information program		
From the earmarked revenue fund		
02131 Fish and game ERA	931,032	980,829
From the federal and private revenue fund		
04522 Fish and game FPRA	395,724	438,644
Fisheries program		
From the earmarked revenue fund		
02131 Fish and game ERA	1,257,055	1,329,322
From the federal and private revenue fund		
04522 Fish and game FPRA	360,652	384,019
Law enforcement program		
From the earmarked revenue fund		
02131 Fish and game ERA	1,855,980	2,011,519
02206 Fish and game motorboat certification ID ERA	30,000	30,000
02207 Fish and game snowmobile registration ERA	22,000	24,200
From the federal and private revenue fund		
04522 Fish and game FPRA	19,993	24,993
04820 Motorboat safety FPRA	39,083	39,083
Game management program		
From the earmarked revenue fund		
02131 Fish and game ERA	1,116,272	1,099,853
From the federal and private revenue fund		
04522 Fish and game FPRA	1,400,526	1,488,707
Recreation and parks programs		
From the general fund	491,141	487,917
From the earmarked revenue fund		
02131 Fish and game ERA	387,097	418,495
02204 State parks miscellaneous ERA	147,842	154,092
02205 State parks ERA	180,286	190,163
02207 Fish and game snowmobile registration ERA	25,000	30,000
From the federal and private revenue fund		
04940 Recreation FPRA	30,000	37,500

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Planning program		
From the earmarked revenue fund		
02131 Fish and game ERA	70,761	71,463
04522 Fish and game FPRA	71,032	71,602
Total	10,314,187	10,857,717
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES		
Comprehensive health planning program		
From the general fund	71,606	65,175
From the federal and private revenue fund		
04413 Public health FPRA	330,651	248,965
Management services program		
From the general fund	437,400	466,375
From the federal and private revenue fund		
04413 Public health FPRA	208,403	220,164
Communicable disease control program		
From the general fund	119,178	123,554
From the federal and private revenue fund		
04413 Public health FPRA	231,179	239,945
Health services program		
From the general fund	1,347,459	1,416,958
Thirty thousand dollars ($30,000) each year shall be used to assist families with children suffering from cystic fibrosis.		
From the federal and private revenue fund		
04237 Heart and chest x-ray survey FPRA	4,755	4,755
04413 Public health FPRA	4,613,527	4,596,727
Health care facilities and manpower program		
From the general fund	295,746	301,908
From the federal and private revenue fund		
04413 Public health FPRA	577,925	612,431
Environmental health program		
From the general fund	886,397	974,155

From the above appropriation $122,990 in fiscal year 1976 and $141,020 in fiscal year 1977 is contingent on the passing of Senate Bills 329, 330, and 367. The license fees if collected shall be reimbursed to the counties. The state shall deduct from said sums the administrative expenses for collecting and handling said funds.

From the earmarked revenue fund		
02227 Junked vehicle ERA	1,150,000	1,200,000
From the federal and private revenue fund		
04413 Public health FPRA	957,161	913,697

Any unexpended funds remaining in the general fund as of June 30, 1975, generated as a result of section 69-6807, R.C.M. 1947, shall be transferred to the earmarked revenue fund, junked cars ERA-02227.

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Water and waste water operators program		
From the earmarked revenue fund		
02970 Bd. of cert. water and waste water operators ERA	11,436	12,472
Total	11,242,823	11,397,281
DEPARTMENT OF LABOR AND INDUSTRY		
Labor Standards Division		
Labor administration program		
From the general fund	214,025	230,712
From the earmarked revenue fund		
02590 Labor and industry private employment agency ERA	1,400	1,400
From the federal and private revenue fund		
04810 Labor and industry FPRA	68,200	68,200
Board of personnel appeals program		
From the general fund	195,956	205,522
From the revolving fund		
07266 Board of personnel appeals RA	8,000	8,000
Human rights bureau program		
From the general fund	91,988	95,447
Status of women bureau program		
From the general fund	36,104	37,669
Total	615,673	646,950
Employment Security Division		
Unemployment insurance and employment service program		
From the federal and private revenue fund		
04428 Employment security administrative FPRA	9,645,866	10,109,138
04520 MDTA payments FPRA	1,900,000	1,900,000
Total	11,545,866	12,009,138
Workmen's Compensation Division		
Administration program		
From the general fund	105,705	105,705
From the earmarked revenue fund		
02140 Workmen's compensation division ERA	1,070,852	1,037,511

It is the intent of this legislature that in addition to the amounts specifically appropriated, $82,065 in fiscal 1976 and $85,646 in fiscal 1977, shall be transferred from the workmen's compensation division ERA 02140, to the department of administration to administer the provisions of House Bill 100, 44th Legislature. The department of administration shall have the authority to spend these funds to administer House Bill 100.

From the federal and private revenue fund		
04890 OSHA statistics program federal statistical study FPRA	51,999	57,277
State insurance fund program		

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From the earmarked revenue fund		
02140 Workmen's compensation division ERA	1,200,478	1,340,845
Insurance compliance program		
From the general fund	602,799	613,924
From the earmarked revenue fund		
02140 Workmen's compensation division ERA	293,044	333,411
02226 Volunteer firemen's compensation ERA	10,000	10,500
Safety and health program		
From the earmarked revenue fund		
02140 Workmen's compensation division ERA	624,924	658,372
From the federal and private revenue fund		
04040 Workmen's compensation division health study FPRA	97,975	106,981
Total	3,977,776	4,264,526
DEPARTMENT OF REVENUE		
Director's office program		
From the general fund	151,472	82,644

From the fiscal 1976 appropriations $79,450 shall be transferred to the legislative audit revolving account to finance an audit of fiscal affairs and transactions of the department of revenue, such an audit to be conducted during the fiscal year ending June 30, 1976. All unused portions of the audit appropriations shall revert to the general fund on June 30, 1976.

From the earmarked revenue fund		
02138 Highway ERA	58,760	57,956
Accounting and auditing division program		
From the general fund	355,593	371,679
From Welfare Fraud Investigation FPRA	9,562	9,150
From the earmarked revenue fund		
02300 gubernatorial campaign fund	all funds available	all funds available

In accordance with section 23-4904, R.C.M. 1947.

Research division program		
From the general fund	175,205	185,198
Legal bureau program		
From the general fund	119,638	126,943
From the federal and private revenue fund		
04754 Welfare fraud investigation FPRA	30,559	31,453
Liquor division program		
From the earmarked revenue fund		
02089 Incorporated cities and towns beer tax ERA	1,079,940	1,124,474

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02093 Liquor control board ERA	4,090,712	4,423,817
From the revolving fund		
07154 Liquor division RA	46,186,705	49,014,528
Income-inheritance tax program		
From the general fund	960,389	1,031,354
From the earmarked revenue fund		
02087 Unclaimed property ERA	16,046	17,289
Corporation tax program		
From the general fund	321,353	338,543

From the moneys received by the department as a result of audits performed by the Multi-state Tax Commission, an amount sufficient to pay Montana's pro rata share of the cost of performing such audits.

Property valuation program		
From the general fund	6,543,320	6,027,949
Miscellaneous taxes program		
From the general fund	248,003	251,862
From the earmarked revenue fund		
02088 Board of equalization cigarette enforcement ERA	15,950	12,412
Motor fuel tax program		
From the earmarked revenue fund		
02138 Highway ERA	328,021	349,593
From the revolving fund		
07061 Department of revenue audit RA	7,200	7,200
Operations division program		
From the general fund	177,428	186,662
Data processing division program		
From the general fund	212,585	215,317
From the earmarked revenue fund		
02093 Liquor control board ERA	132,081	141,877
From the Welfare Fraud Investigation FPRA	27,312	7,185
Investigation bureau program		
From the general fund	226,776	227,891
From the earmarked revenue fund		
02093 Liquor control board ERA	109,835	118,087
From the federal and private revenue fund		
04754 Welfare fraud investigation FPRA	177,855	179,229
Total	61,762,300	64,570,116

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Central services program		
From the earmarked revenue fund		
02001 Professional and occupational admin. services ERA	91,794	100,033
Board of abstractors program		
From the earmarked revenue fund		

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02110 Board of abstractors ERA	2,434	2,520
Board of architects program		
From the earmarked revenue fund		
02107 Architectural examiners ERA	14,370	16,084
Board of athletics program		
From the earmarked revenue fund		
02102 Veterans memorial ERA	2,171	2,381
Board of barbers program		
From the earmarked revenue fund		
02233 Barber examiners ERA	18,215	27,113
Board of chiropractors program		
From the earmarked revenue fund		
02119 Chiropractic examiners ERA	6,443	7,684
Board of cosmetologists program		
From the earmarked revenue fund		
02183 Cosmetology board ERA	58,899	63,736
Board of dentists program		
From the earmarked revenue fund		
02199 Dental examiners ERA	10,297	11,011
Electrical board program		
From the earmarked revenue fund		
02050 Board of electricians ERA	259,720	304,004
Board of hearing aid dispensers program		
From the earmarked revenue fund		
02027 Board of hearing aid dispensers ERA	5,253	5,625
Board of horse racing program		
From the earmarked revenue fund		
02195 Horse racing commission ERA	73,755	80,308
Board of massage therapists program		
From the earmarked revenue fund		
02028 Massage board ERA	2,904	3,355
Board of medical doctors program		
From the earmarked revenue fund		
02152 Board of medical examiners ERA	55,880	55,798
Board of morticians program		
From the earmarked revenue fund		
02109 Board of morticians ERA	7,555	7,596
Board of nursing program		
From the earmarked revenue fund		
02224 Board of nursing ERA	71,733	77,076
Board of nursing home administrators		
From the earmarked revenue fund		
02026 Board of nursing home administrators ERA	12,903	13,270
Board of optometrists program		
From the earmarked revenue fund		

02215 Optometry examiners ERA	7,434	7,934
Board of osteopaths program		
From the earmarked revenue fund		
02221 Osteopathic examiners ERA	812	888
Board of pharmacists program		
From the earmarked revenue fund		
02220 Board of pharmacy ERA	44,383	47,274
Board of plumbers program		
From the earmarked revenue fund		
02190 Plumbing examiners ERA	50,414	55,397
Board of professional engineers and land surveyors program		
From the earmarked revenue fund		
02133 Professional engineers ERA	41,566	45,895
Board of public accountants program		
From the earmarked revenue fund		
02029 Board of public accountancy ERA	43,232	47,601
Board of real estate program		
From the earmarked revenue fund		
02078 Real estate ERA	191,737	200,594
Board of veterinarians program		
From the earmarked revenue fund		
02232 Veterinary medical examiners ERA	9,103	8,519
Board of water well contractors program		
From the earmarked revenue fund		
02171 Water well contractors ERA	8,218	9,183
Board of psychologists program		
From the earmarked revenue fund		
02540 Board of psychologist examiners ERA	2,145	2,401
Board of sanitarians program		
From the earmarked revenue fund		
02035 Sanitarians registration ERA	1,349	1,515
Board of Landscape Architects		
From the earmarked revenue fund	3,700	2,870
Board of Speech Pathology and Audiology		
From the earmarked revenue fund	7,940	4,520
Board of Radiologic Technologists		
From the earmarked revenue fund		6,615
Board of Warm Air Heating Ventilation and Air Conditioning		
From the earmarked revenue fund	6,804	6,052
Board of Private Investigators		

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From the earmarked revenue fund	1,100	1,127
Total	1,108,813	1,226,159
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Centralized services program		
From the general fund	679,120	717,904
From the earmarked revenue fund		
02219 Oil and gas ERA	24,300	26,400
02231 Grass conservation ERA	1,500	1,500
Oil and gas regulating program		
From the earmarked revenue fund		
02219 Oil and gas ERA	247,181	262,386
Grazing districts supervision program		
From the general fund	23,753	26,046
From the earmarked revenue fund		
02231 Grass conservation ERA	18,774	18,774
Conservation districts supervision program		
From the general fund	104,297	103,400
Floodway management program		
From the general fund	41,054	43,667
Water rights program		
From the general fund	647,931	675,590
Water engineering program		
From the general fund	660,578	749,147
Water resources and planning program		
From the general fund	212,658	194,801
From the federal and private revenue fund		
04059 Water board FPRA	382,747	107,748
Forest management program		
From the general fund	609,267	712,975
From the earmarked revenue fund		
02100 Timber stand improvement ERA	61,802	61,803
02160 Foresters nursery ERA	43,007	43,007
From the federal and private revenue fund		
04419 Clark-McNary FPRA	8,000	8,000
04441 Cooperative forest management FPRA	141,331	141,332
Fire protection program		
From the general fund	851,177	891,549
From the earmarked revenue fund		
02156 Slash and brush disposal ERA	357,632	358,436
From the federal and private revenue fund		
04419 Clark-McNary FPRA	722,947	726,448
Institutional forestry work program		
From the general fund	80,165	84,980

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Energy planning program		
From the general fund	134,568	139,568
From the earmarked revenue fund 02999 Utility siting ERA	608,127	687,208
Total	$6,661,916	6,782,669

Any unexpended funds remaining in the general fund as of June 30, 1975, generated as a result of section 70-806, R.C.M. 1947, shall be transferred to the earmarked revenue fund, utility siting ERA - 02999.

Approved May 1, 1975.

HOUSE BILL NO. 265

AN ACT TO APPROPRIATE MONEYS TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1975; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the governor, or his designated representative, of a request submitted through the budget director to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

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Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources other than the general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget director, on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget director for review.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislature in the 1975 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor, or his designated representative after presentation through the budget director.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget director.

Section 9. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the federal funds shall be deposited into the general fund unless usage of the federal funds is restricted by federal provisions.

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Section 10. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) operation of the legislature;

(3) public schools;

(4) the judiciary; or

(5) salaries of elected officials, during their term of office.

Section 11. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. The following moneys are appropriated for the fiscal year ending June 30, 1975:

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING	
Central services program	
From the earmarked revenue fund	
02001 Administrative services ERA	$ 114
Board of Dentists	
From the earmarked revenue fund	
02199 Dental examiners ERA	2,215
Board of Horse Racing	
From the earmarked revenue fund	
02195 Horse racing commission ERA	2,436
Board of Real Estate	
From the earmarked revenue fund	
02078 Real estate ERA	61,059
Board of Psychologists	
From the earmarked revenue fund	
02540 Board of psychologist examiners ERA	937
Board of Professional Engineers and Land Surveyors	
From the earmarked revenue fund	
02133 Professional engineers ERA	10,629
Board of Medical Doctors Program	
From the earmarked revenue fund	
02152 Board of medical examiners ERA	10,000
Board of Nursing Program	
From the earmarked revenue fund	
02224 Board of nursing ERA	3,214
Board of Pharmacists Program	
From the earmarked revenue fund	
02220 Board of pharmacy ERA	12,420
Board of Plumbers Program	
From the earmarked revenue fund	

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02190 Plumbing examiners ERA 5,350
Board of Veterinarians Program
From the earmarked revenue fund
02232 Veterinary medical examiners ERA 1,000
Board of Hearing Aid Dispensers
From the earmarked revenue fund
02027 Hearing aid dispensers ERA 400
Board of Electrical Program
From the earmarked revenue fund
02050 Electrical board ERA 48,989
Board of Sanitarians
From the earmarked revenue fund
02035 Sanitarians registration ERA 500

COUNTY ATTORNEYS
Legal services program
From the general fund 33,075

DISTRICT COURT JUDGES
District judges program
From the general fund 23,750

DEPARTMENT OF PUBLIC SERVICE REGULATION
Public service regulation program
From the general fund 32,570

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Developmental disabilities services and facilities program
From the general fund 249,488
Economic Assistance Program
From the general fund 1,800,000
Any funds unexpended from this appropriation as of June 30, 1975, is hereby reappropriated for the fiscal year ending June 30, 1976.

DEPARTMENT OF INSTITUTIONS
Community based services program
From the general fund 145,224
Center for the Aged
Care and treatment program
From the general fund 3,465
General services program
From the general fund 16,350
Childrens Center
Counseling and guidance program
(Judgement pursuant to Glick v. Dept. of Institutions Supreme Court Docket No. 12725)
From the general fund 260,446
Galen State Hospital
Alcoholic program
From the general fund 161,778
Pine Hills School
General services program
From the general fund 26,017

Farm program	
From the general fund	20,524
Montana State Prison	
General services program	
From the general fund	175,525
Ranch program	
From the general fund	276,880
Swan River Youth Forest Camp	
General services program	
From the general fund	2,000
Secretary of State	
From the general fund	26,665
Department of Health and Environmental Sciences	
Microbiology Laboratory	
From the general fund	15,000
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Fire protection program	
From the general fund	227,498
DEPARTMENT OF LABOR AND INDUSTRY	
Workmen's Compensation Division	
Insurance Compliance Program	
From the general fund	20,000
DEPARTMENT OF BUSINESS REGULATION	
Private Post-secondary Education Program	
From the general fund	17,065
DEPARTMENT OF JUSTICE	
Highway Patrol Bureau	
Patrol Operations Program	
From the general fund	15,700
ENVIRONMENTAL QUALITY COUNCIL	
From the general fund	11,015
DEPARTMENT OF ADMINISTRATION	
State Board of Examiners	
Claim of Joseph N. Dalbec	
From the general fund	574.95
Legislature	
From the general fund for the payment of the employer's contribution to the public employees' retirement system for those enrolled in accordance with section 68-1602 (1), R.C.M. 1947	50,000

Section 13. There is appropriated to the forty-fourth legislature the sum remaining in Senate Bill 511, forty-third legislature, second regular session.

Section 14. Any claim made prior to July 1, 1975, for unpaid encumbrances of the forty-third legislature shall be paid from monies appropriated by section 13.

Section 15. This act is effective upon passage and approval.

Approved April 21, 1975.

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HOUSE BILL NO. 269

AN ACT APPROPRIATING MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of the executive branch, offices of the judicial branch, and offices of the legislative branch of state government.

(2) "Approving authority" means the governor, or his designated representative, for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; or the appropriate legislative committees for legislative branch agencies, unless otherwise provided by law.

Section 2. An agency may request and the approving authority may approve a budget amendment to:

(1) obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund and other than receipts to the state from the United States government made available under the provisions of the State and Local Fiscal Assistance Act of 1972; or

(2) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(3) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium. All requests for budget amendments shall be submitted through the budget director.

Section 3. In approving a budget amendment, the approving authority shall certify:

(1) specific additional services to be provided as a result of a higher expenditure level;

(2) that no other alternative is available to provide the additional services;

(3) that the additional proposed services have not been considered and rejected by the legislature; and

(4) that no commitment, implied or otherwise, is made for increased future general fund support.

Section 4. The appropriations contained in this act are intended to

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provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unexpended balance of any appropriation shall revert to the fund from which it was appropriated.

Section 5. Expenditures shall not exceed appropriations except as otherwise provided in this act.

Section 6. Each department, agency and program of the executive branch shall submit to the budget director by July 1 of each fiscal year a detailed budget within the limits of the appropriation which includes the position and salary of each employee. Expenditures shall be made only in accordance with budgets approved by the budget director for executive branch agencies; by the chief justice of the supreme court for judicial branch agencies; and by the appropriate legislative committees for legislative branch agencies.

Section 7. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the 44th Legislature, unless a budget amendment has been approved by the appropriate approving authority.

Section 8. All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 9. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) the legislative branch;

(3) public schools;

(4) the judicial branch; or

(5) salaries of elected officials, during their term of office.

Section 10. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 11. The provisions set forth in this section are limitations on the appropriations made in this act, provided, however, that these limitations do not apply to the distribution of public funds under the superintendent of public instruction. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

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(2) All expenditures of funds appropriated by this act for the purchase of property, materials, and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against non-general fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury pursuant to provisions of Title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any agency subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
DEPARTMENT OF HIGHWAYS		
General operations program		
From the earmarked revenue fund		
02138 Highway ERA	$ 4,063,742	$ 4,238,451
From the federal and private revenue fund		
04410 Highway trust FPRA	1,471,519	1,554,084
Construction program		
From the earmarked revenue fund		
02138 Highway ERA	13,663,062	13,836,959
From the federal and private revenue fund		
04410 Highway trust FPRA	43,058,178	43,455,187
Maintenance program		
From the earmarked revenue fund		
02138 Highway ERA	18,491,991	19,699,867
Travel promotion program		
From the earmarked revenue fund		
02138 Highway ERA	654,830	650,915
Preconstruction program		
From the earmarked revenue fund		
02138 Highway ERA	2,502,303	2,650,673
From the federal and private revenue fund		
04410 Highway trust FPRA	4,118,007	4,256,737
Equipment program		

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From the revolving fund		
07235 Highway equipment RA	4,767,176	4,983,955
Total	92,790,808	95,326,828
STATE MOTOR POOL		
Administration program		
From the revolving fund		
07078 Highway commission reimb motor vehicle pool RA	656,744	678,960
Total	656,744	678,960
DEPARTMENT OF STATE LANDS		
Central management program		
From the general fund — county equalization grants	175,000	175,000
From the general fund — operations	299,830	318,149
Reclamation program		
From the general fund	350,779	379,092
From the earmarked revenue fund		
02173 Land reclamation ERA	All funds available	All funds available
Land administration program		
From the general fund	174,237	181,081
Resource development program		
From the earmarked revenue fund		
02114 State lands resource development ERA	346,344	345,439
Saline-alkali study program		
From the general fund	220,769	235,794
Total	1,566,959	1,634,555
DEPARTMENT OF LIVESTOCK		
Centralized services program		
From the general fund	12,021	13,141
From the earmarked revenue fund		
02149 Inspection and control ERA	80,289	85,900
02151 Animal health ERA	53,747	57,534
Animal health administration program		
From the general fund	25,710	27,693
From the earmarked revenue fund		
02151 Animal health ERA	31,503	32,676
Diagnostic laboratory program		
From the general fund	144,884	157,124
From the earmarked revenue fund		
02151 Animal health ERA	150,982	163,826
Disease control program		
From the earmarked revenue fund		
02151 Animal health ERA	290,089	301,119
Milk and egg program		

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From the general fund	139,497	148,720
From the federal and private revenue fund		
04099 Livestock sanitary board FPRA	10,330	10,352
Inspection and control program		
From the earmarked revenue fund		
02149 Inspection and control ERA	1,028,329	1,093,329
Predatory animal control program		
From the earmarked revenue fund		
02149 Inspection and control ERA	196,236	199,712
Rodent control program		
From the general fund	49,118	53,321
Rabies control program		
From the general fund	15,079	14,944
Total	2,227,814	2,359,301

DEPARTMENT OF ADMINISTRATION

Central administration program		
From the general fund	132,045	140,408
Governor elect program		
From the general fund	0	30,000
Accounting program		
From the general fund	505,207	531,680
Architecture and engineering program		
From the general fund	117,496	111,480
From the revolving fund		
07245 Department of administration construction RA	80,786	98,788
Legislative liaison program		
From the general fund	0	0
Data processing program		
From the revolving fund		
07159 Central data processing RA	2,294,966	2,640,650

The department of administration is authorized to contract for the purchase of an IBM 370/158 central processing unit on a time-pay plan not to exceed eight (8) years.

General services program		
From the general fund	604,101	638,819
From the federal and private revenue fund		
04120 Capitol building FPRA	150,200	150,200
From the revolving fund		
07238 General services RA	690,367	851,973

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07264 Office rent RA	163,558	184,879
Management systems program		
From the general fund	158,589	161,301
Purchasing program		
From the general fund	210,615	222,940
Building standards program		
From the revolving fund		
07242 Construction regulation RA	127,731	154,194
Investment program		
From the revolving fund		
07260 Investments RA	256,705	264,179
Communications program		
From the general fund	0	0
From the revolving fund		
07258 Communications RA	1,107,192	1,186,022
Emergency and disaster program		
From the general fund	0	0
Personnel program		
From the general fund	372,267	370,858
From the federal and private revenue fund		
04080 Intergovernmental personnel FPRA	75,868	79,867
From the revolving fund		
07000 Recruitment and placement RA	7,000	7,000
07254 Intergovernmental training RA	5,500	6,000
State insurance program		
From the general fund	518,115	514,254
From the earmarked revenue fund		
02106 University millage ERA	273,547	282,491
Passenger tramway safety program		
From the earmarked revenue fund		
02520 Passenger tramway safety ERA	2,600	2,600
Records management program		
From the general fund	94,231	96,447
Extradition and transportation of prisoners program		
From the general fund	45,000	45,000
Microwave communications program		
From the revolving fund		
07265 Radio/microwave communications maintenance RA	287,798	291,038

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Labor relations bureau program		
From the general fund	102,687	107,408
Total	8,384,171	9,170,476
Board of Examiners		
Examination and review program		
From the general fund	34,692	34,847
Interim projects program		
From the general fund	9,000	9,000
Vietnam honorarium program		
Any funds remaining on June 30, 1975, are hereby reappropriated for the biennium ending June 30, 1977, to be used as originally intended.		
Total	43,692	43,847
Merit System Bureau		
Personnel services program		
From the earmarked revenue fund		
02208 Merit system council ERA	140,024	144,052
Total	140,024	144,052
Board of Administration		
P.E.R.S. program		
From the general fund	2,000	2,000
From the earmarked revenue fund		
02122 P.E.R.S. ERA	345,873	358,816
02226 Volunteer firemen's compensation ERA	55,650	83,000
Total	403,523	443,816
Teachers' Retirement Board		
Teachers' retirement program		
From the earmarked revenue fund		
02207 Teachers' retirement ERA	212,999	217,557
Total	212,999	217,557
State Tax Appeal Board		
Administration program		
From the general fund	232,515	235,213
Total	232,515	235,213
DEPARTMENT OF AGRICULTURE		
Administration program		
From the general fund	149,023	159,529
From the earmarked revenue fund		
02065 Commercial fertilizer ERA	703	703
02164 Commercial feed ERA	700	700
From the federal and private revenue fund		
04437 Marketing service FPRA	23,587	25,451
04652 Wheat research and marketing FPRA	1,104	1,130
Marketing and transportation program		

From the general fund	117,335	121,396
From the federal and private revenue fund		
04652 Wheat research and marketing FPRA	46,536	47,835
Pesticide control program		
From the general fund	119,773	127,862
Weed control advisory council		
From the general fund	2,500	0
Commercial feed and fertilizer program		
From the earmarked revenue fund		
02065 Commercial fertilizer ERA	71,576	72,533
02164 Commercial feed ERA	59,791	58,410
Horticulture program		
From the general fund	194,314	206,509
Wheat research and marketing program		
From the federal and private revenue fund		
04652 Wheat research and marketing FPRA	223,775	230,853
Grain laboratories program		
From the earmarked revenue fund		
02070 Grain services ERA	134,578	130,312
Apiary regulation program		
From the general fund	36,984	40,639
Hail insurance program		
From the earmarked revenue fund		
02136 Hail insurance administration ERA	95,915	102,357
Total	1,278,194	1,326,219
DEPARTMENT OF BUSINESS REGULATION		
Centralized services program		
From the general fund	108,652	124,194
From the earmarked revenue fund		
02049 Milk control ERA	19,621	23,236
02200 Food distributors ERA	5,224	6,238
Weights and measures program		
From the general fund	201,407	205,235
Financial program		
From the general fund	362,022	383,414
Trade regulation program		
From the earmarked revenue fund		
02200 Food distributors ERA	42,623	44,552
Milk control program		
From the earmarked revenue fund		
02049 Milk control ERA	155,329	166,009
Consumer protection program		
From the general fund	51,083	53,087
Private postsecondary education program		
From the general fund	39,897	41,605

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Total	985,858	1,047,570
DEPARTMENT OF INTERGOVERNMENTAL RELATIONS		
Aeronautics - administration program		
From the earmarked revenue fund		
02188 Aeronautics commission ERA	237,828	196,150
Airport development program		
From the earmarked revenue fund		
02188 Aeronautics commission ERA	231,035	283,021
Airport operations program		
From the earmarked revenue fund		
02188 Aeronautics commission ERA	123,038	124,238
Aeronautics - navigational aids program		
From the earmarked revenue fund		
02188 Aeronautics commission ERA	52,426	54,028
Aeronautics - safety and education program		
From the earmarked revenue fund		
02188 Aeronautics commission ERA	80,074	82,244
County board of printers		
From the general fund	1,250	1,250
Human resources division program		
From the general fund	87,782	93,385
From the federal and private revenue fund		
04435 OEO coordinator FPRA	2,381,968	2,386,290
Highway traffic safety program		
From the earmarked revenue fund		
02138 Highway ERA	41,500	41,882
From the federal and private revenue fund		
04417 Traffic safety coordinator FPRA	124,954	134,169
Audit program		
From the general fund	517,174	592,549
Accounting and management systems program		
From the general fund	208,303	210,611
Local assistance program		
From the general fund	0	0
Economic development program		
From the general fund	99,040	106,995
From the federal and private revenue fund		
04048 Planning and economic development FPRA	118,315	120,892
Planning program		
From the general fund — grants to local govt. study commissions	607,800	303,900
From the general fund — operations	174,026	186,384
From the federal and private revenue fund		
04048 Planning and economic development FPRA	131,520	136,670

Centralized services program		
From the general fund	159,424	179,621
From the earmarked revenue fund		
02188 Aeronautics commission ERA	59,123	63,482
From the federal and private revenue fund		
04048 Planning and economic development FPRA	65,301	70,669
04417 Traffic safety coordinator FPRA	36,129	38,665
04435 OEO coordinator FPRA	75,990	82,149
Old west regional commission program		
From the general fund	0	0
From the federal and private revenue fund		
04048 Planning and economic development FPRA	96,427	108,412
Indian affairs coordinator		
From the general fund	45,795	48,153
From the general fund for task force on tribal state and federal responsibilities	62,100	65,565
Research and information program		
From the general fund	137,917	147,339
From the earmarked revenue fund		
02083 Planning and economic development publications ERA	3,500	3,500
From the federal and private revenue fund		
04048 Planning and economic development FPRA	51,407	54,822
From the revolving fund		
07066 Department of planning file management systems RA	5,000	5,000
Housing program		
From the general fund	73,141	76,009
From the federal and private revenue fund		
04048 Planning and economic development FPRA	13,491	13,491
Total	5,999,623	5,908,430

DEPARTMENT OF MILITARY AFFAIRS

Adjutant General		
Administration program		
From the general fund	116,086	125,679
Army national guard program		

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From the general fund	310,116	331,443
From the federal and private revenue fund 04521 National guard FPRA	71,100	76,829
Air national guard program		
From the general fund	50,623	54,533
From the general fund for security guards	29,500	
From the general fund for firemen at Great Falls Air National Guard Base	50,220	27,236
From the federal and private revenue fund 04521 National guard FPRA	47,314	50,088
From the federal and private revenue fund 04521 National guard FPRA for security guards	66,064	
04521 National guard FPRA For firemen at Great Falls Air National Guard Base	75,130	109,305
Total	816,153	775,113
Civil Defense Agency		
Civil defense coordination program		
From the general fund	100,524	106,303
From the federal and private revenue fund 04510 Civil defense FPRA	100,524	106,303
Fuel allocation program		
From the general fund	102,250	108,347
From the federal and private revenue fund 04510 Civil defense FPRA	14,008	15,226

Funds received by Montana under authority of PL 93-322 shall be made available to this program in the same proportion as was the case in the fiscal year ending June 30, 1974. The receipt of such funds shall not result in a higher expenditure level than that authorized, but shall be used to reduce the general fund appropriation.

Calibration and maintenance program		
From the federal and private revenue fund 04526 Civil defense calibration FPRA	39,865	42,422
Shelter development program		
From the federal and private revenue fund 04470 Civil defense community shelter FPRA	53,344	56,552
Civil defense training and education program		
From the federal and private revenue fund 04510 Civil defense FPRA	66,498	71,736
Total	477,013	507,043

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Economic assistance program

From the general fund	17,974,711	19,375,933
From the revolving fund		
07138 County reimbursement RA	2,160,343	2,297,524

The above appropriation includes sufficient funds to increase the rates of payment for foster care from $90 to $125 for children 12 years of age and under and from $100 to $150 for children 13 to 18 years of age; to provide $50 as a clothing allowance for each initial placement; and to pay all liability insurance at licensed homes.

Community services program		
From the general fund	1,096,445	1,141,303
From the general fund		
For legal services	50,000	50,000
From the federal and private revenue fund		
04422 Public welfare FPRA	3,136,615	3,370,799
From the federal and private revenue fund		
04422 Public welfare FPRA		
For legal services	150,000	150,000
From the revolving fund		
07138 County reimbursement RA	1,198,147	1,299,483

In the event the General Fund money for legal services does not generate matching federal funds, they shall revert to the General Fund. In the event full federal funding becomes available, the unused portion of the appropriation shall revert to the General Fund.

Eligibility determination program		
From the general fund	786,840	914,524
From the federal and private revenue fund		
04422 Public welfare FPRA	2,328,566	2,400,152
From the revolving fund		
07138 County reimbursement RA	1,125,071	1,203,801
Centralized services program		
From the general fund	527,715	570,138
From the federal and private revenue fund		
04422 Public welfare FPRA	1,029,398	1,115,678
Staff development and training program		
From the general fund	79,113	84,873
From the federal and private revenue fund		
04422 Public welfare FPRA	295,547	312,504
From the revolving fund		
07138 County reimbursement RA	20,000	20,000
Field services program		
From the general fund	54,474	57,996
From the federal and private revenue fund		
04422 Public welfare FPRA	89,460	94,870
Vocational guidance program		
From the general fund	580,738	622,134
From the federal and private revenue fund		
04418 Vocational rehabilitation FPRA	1,099,144	1,142,569
Disability determination program		
From the federal and private revenue fund		

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04418 Vocational rehabilitation FPRA	959,221	1,018,164
Youth development program		
From the general fund	85,011	100,213
From the federal and private revenue fund		
04418 Vocational rehabilitation FPRA	464,962	528,335
Visual services program		
From the general fund	128,083	146,706
From the federal and private revenue fund		
04418 Vocational rehabilitation FPRA	312,395	321,273
Developmental disabilities program		
From the general fund	1,836,165	2,935,527
From the federal and private revenue fund		
04422 Public welfare FPRA	451,795	469,771
From the revolving fund		
07138 County reimbursement RA	15,705	16,454
Aging services program		
From the general fund	101,546	120,553
From the federal and private revenue fund		
04030 Commission on aging FPRA	162,803	159,416
Veterans affairs program		
From the general fund	277,411	297,551
Total	38,577,424	42,338,244
Mental disabilities board of visitors		
From the general fund	30,000	30,000
Total	30,000	30,000

The remaining balance of any general fund appropriation to the department of social and rehabilitation services for the biennium ending June 30, 1975, is hereby reappropriated for the biennium ending June 30, 1977.

Approved May 1, 1975.

HOUSE BILL NO. 271

AN ACT TO APPROPRIATE MONIES TO THE BOARD OF REGENTS FOR THE UNIVERSITY SYSTEM UNITS FOR THE BIENNIUM ENDING JUNE 30, 1977, AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS.

Be it enacted by the Legislature of the State of Montana:

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Section 1. For the purposes of this act, unless otherwise stated:

(1) "University system unit" means the board of regents, office of the commissioner of higher education, the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural station with central offices at Bozeman, the cooperative extension service with central offices at Bozeman, or the bureau of mines and geology with central offices at Butte.

(2) "Program" means a segment of a university system unit that includes a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval by the board of regents unless otherwise provided by law, of a request to:

(a) obtain financing for new or expanded programs from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund; or

(b) transfer not more than fifteen percent (15%) of any single university system unit's appropriations, including general fund appropriation between units and transfer appropriations between programs within a university system unit; or

(c) expend remaining balances of the first fiscal year of the biennial appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. Expenditures shall not exceed appropriations except as otherwise provided by approved budget amendment.

Section 4. Budgets for each new year by university system unit and program shall be approved by the board of regents and be available for review at the office of the commissioner of higher education on or before July 1 of that fiscal year. Expenditures shall be made only in accordance with approved budgets. Budgets shall reflect the position and salary of all officers and employees by program. Copies of budgets and subsequent budget amendments shall be submitted to the office of the budget director and the legislative finance committee.

Section 5. No new programs may be established and no existing programs may be expanded beyond the scope of the programs approved by the forty-fourth legislature, unless the new programs or the program expansions and their method of financing is approved in an approved budget amendment.

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Section 6. Transfers of appropriated funds between programs and university system units may be made only by approved budget amendment.

Section 7. If the operation of a university system unit is financed by an appropriation or appropriations from the general fund as well as by appropriations from other sources, the funds provided by appropriations from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the forty-fourth legislature, unless provided by approved budget amendment.

Section 8. All federal funds received as a reimbursement for the cost of administering the federal funds shall revert to the general fund if such reimbursement exceeds nine hundred eighty-three thousand dollars ($983,000).

Section 9. The governor may reduce any appropriation in this act by not more than fifteen percent (15%).

Section 10. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 11. The following moneys are appropriated to the board of regents for the respective university system units for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
COMMISSIONER OF HIGHER EDUCATION		
Administration		
From the general fund	$131,679	$137,985
From the federal and private revenue fund		
04090 Commissioner of higher education FPRA	49,148	50,919
Total	180,827	188,904
Student services		
Administrative	9,070	9,644
WICHE - Administrative	28,000	28,000
WICHE - Program assistance	597,030	636,200
NDEA	30,000	30,000
WAMI		250,000
University of Minnesota rural dentistry	78,000	108,000
Federal incentive matching money	57,730	57,730
Community Colleges		
Flathead Valley Community College	631,216	681,111
Dawson Community College	318,220	343,437
Miles Community College	325,642	350,595

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Total	2,074,908	2,494,717
From the general fund	2,074,908	2,494,717
Total	2,074,908	2,494,717
UNIVERSITY OF MONTANA		
Instruction	10,114,000	10,783,084
Research	176,768	192,845
Public service	131,718	143,728
Academic support	1,737,215	1,864,412
Student services	886,183	967,320
Institutional support	1,730,230	1,746,019
Operation and maintenance of plant	1,941,316	2,122,067
Forest Experiment Station	241,591	265,750
Scholarships and fellowships	525,000	525,000
Malmstrom Air Force Base Instruction	298,085	314,196
Total	17,782,106	18,924,421
From the general fund	9,808,239	10,795,983
From the earmarked revenue fund		
02106 University millage ERA	3,041,786	3,165,627
02650 UM student fee ERA	4,336,999	4,341,191
From the federal and private revenue fund		
04308 UM interest and income FPRA	75,000	75,000
04515 UM federal program FPRA	346,944	363,054
Social Rehabilitation Services transfer	173,138	183,566
Total	17,782,106	18,924,421
MONTANA STATE UNIVERSITY		
Instruction	9,732,339	10,361,202
Research	346,301	377,457
Public service	42,428	46,327
Academic support	1,535,118	1,634,173
Student service	1,081,334	1,181,046
Institutional support	1,569,755	1,585,030
Operation and maintenance of plant	1,685,170	1,839,810
Scholarships and fellowships	390,000	390,000
WAMI	300,393	236,106
Total	16,682,838	17,651,151
From the general fund	9,743,770	10,600,603
From the earmarked revenue fund		
02106 University millage ERA	2,927,786	3,030,556
02630 MSU student fee ERA	3,581,859	3,584,546
From the federal and private revenue fund		
04302 Morrill interest and income FPRA	148,757	148,757
04401 Merrill-Nelson FPRA	198,304	198,305

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Social Rehabilitation Services transfer	82,362	88,384
Total	16,682,838	17,651,151
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY		
Instruction	1,020,263	1,052,091
Research	24,388	25,789
Academic support	118,898	128,860
Student services	106,777	116,489
Institutional support	309,851	320,612
Operation and maintenance of plant	331,144	362,035
Scholarships and fellowships	114,402	114,402
Total	2,025,723	2,120,278
From the general fund	1,262,733	1,356,670
From the earmarked revenue fund		
02106 University millage ERA	219,949	212,068
02610 MCMST student fee ERA	543,041	551,540
Total	2,025,723	2,120,278
EASTERN MONTANA COLLEGE		
Instruction	2,872,799	2,970,452
Academic support	538,442	581,122
Student services	359,877	392,724
Institutional support	769,621	795,471
Operation and maintenance of plant	762,360	832,405
Scholarships and fellowships	125,000	125,000
Total	5,428,099	5,697,174
From the general fund	3,543,550	3,847,173
From the earmarked revenue fund		
02106 University millage ERA	823,694	804,194
02620 Eastern Montana college ERA	975,266	956,424
From the federal and private revenue fund		
04315 EMC interest and income FPRA	19,576	19,576
Career opportunity program	50,000	50,000
Teacher corps projects	16,013	19,807
Total	5,428,099	5,697,174
NORTHERN MONTANA COLLEGE		
Instruction	1,258,860	1,343,037
Public service	24,039	26,224
Academic support	293,627	314,031
Student services	145,167	158,405
Institutional support	297,791	305,377
Operation and maintenance of plant	366,016	399,482
Scholarships and fellowships	57,884	50,936
Total	2,443,384	2,597,492
From the general fund	1,675,786	1,835,192
From the earmarked revenue fund		

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02106 University millage ERA	319,800	320,990
02640 NMC student fee ERA	356,646	350,161
From the federal and private revenue fund		
04094 Northern Montana college FPRA	91,152	91,149
Total	2,443,384	2,597,492
WESTERN MONTANA COLLEGE		
Instruction	890,382	929,735
Academic support	97,991	105,139
Student services	126,665	138,246
Institutional support	162,074	163,889
Operation and maintenance of plant	272,646	297,825
Scholarships and fellowships	41,832	36,450
Total	1,591,590	1,671,284
From the general fund	1,213,376	1,323,871
From the earmarked revenue fund		
02106 University millage ERA	200,377	179,957
02660 WMC student fee ERA	177,837	167,456
Total	1,591,590	1,671,284
AGRICULTURAL EXPERIMENT STATION		
From the general fund	2,685,608	2,903,460
From the earmarked revenue fund		
02115 Experiment station ERA	541,584	534,390
02115 Experiment station ERA	8,229	7,753

This appropriation is for payment of the contract for deed between Milo C. Roberts and Edith Z. Roberts for the use and benefit of the agriculture experiment station.

02115 Experiment station ERA	75,000

This appropriation is intended to continue the provisions of House Bill 581, Forty-third Legislature. Any funds remaining from this amount at the end of the fiscal year ending 6/30/76 will be carried forward to the fiscal year ending 6/30/77.

02580 Experiment station fertilizer ERA	41,968	45,298
From federal and private revenue fund	1,425,202	1,515,179
Total	4,777,591	5,006,080
COOPERATIVE EXTENSION SERVICE		
From the general fund	976,960	1,135,297
From the earmarked revenue fund		
02560 Extension service fertilizer ERA	44,954	46,955
From the revolving fund		
07075 Extension service RA	99,534	110,434
From federal and private revenue funds	1,667,518	1,612,404
Total	2,788,966	2,905,090
BUREAU OF MINES AND GEOLOGY		
From the general fund	649,672	703,442

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From federal and private revenue funds	127,000	140,000
Total	766,672	843,442
BOARD OF REGENTS		
From the earmarked revenue fund 02106 University millage ERA	16,353	17,353
From the general fund	4,000,000	

The above general fund appropriation is to be distributed to the board of regents for the Montana university system in the 1977 biennial budget.

Indian teacher training program		
From the general fund	240,000	240,000
Total	4,256,353	257,353

Section 12. The provisions set forth in this section are limitations on the appropriations made in this act. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby contingent upon the board of regents certifying to the budget director that the university units shall comply completely with the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against nongeneral fund moneys before general fund moneys.

(4) All moneys collected or received by university system units subject to this act from any source whatsoever, including federal grants for research and operations, and any moneys received from a foundation shall be deposited in the state treasury pursuant to the provisions of Title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any university system unit subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury, provided that the anonymity of private foundation donors shall be maintained and that private donations shall not be used as an offset to general fund appropriations.

(5) By July 1, 1976, all assets, liabilities, balances, receipts and expenditures of each university unit shall be accounted for in a uniform manner under a centralized accounting system which shall be totally consistent with the requirements and guidelines of the "Industry Audit Guide, Audits of Colleges and Universities" of the American Institute of Certified Public Accountants and "College and University Business Administration" prepared by the National Association of College and University Business Officers.

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It is the intent of the legislature that duplication of existing accounting systems not occur and that to assure a coordinated state accounting system, the department of administration and budget director assist the board of regents in developing and implementing the centralized system.

(6) Salary increases for presidents of units of the university system and for the commissioner of higher education shall not exceed five percent (5%) each year of the biennium using the respective fiscal year 74-75 salaries previously approved by the regents as the basis for determining such increases.

In the absence of such certification of compliance, the appropriations in this act are null and void.

The regents shall grant classified university employees salaries in accord with House Joint Resolution 37, forty-fourth legislature.

Approved May 1, 1975.

HOUSE BILL NO. 272

AN ACT APPROPRIATING MONIES TO VARIOUS STATE AGENCIES FOR IMPLEMENTATION OF THE STATEWIDE PAY PLAN JANUARY 1, 1975; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. The following monies are appropriated for implementation of House Joint Resolution 37, forty-fourth legislature, for the fiscal year ended June 30, 1975:

GOVERNOR	
Executive Office Program	
From the General Fund	$6,379
Mansion Maintenance Program	
From the General Fund	244
Budget and Program Planning Program	
From the General Fund	10,325
Citizen's Advocate Program	
From the General Fund	198
Manpower Planning Program	
From the Federal and Private Revenue Fund	
04393 Manpower Planning FPRA	572
Drug Coordinator Program-IDARP	
From the Federal and Private Revenue Fund	
04920 Drug Coordinator FPRA	312
SECRETARY OF STATE	
Records Management Program	
From the General Fund	17,866
STATE AUDITOR	
Management and Control Program	

From the General Fund	4,873
Central Payroll Program	
From the General Fund	3,469
Insurance Regulation and Licensing Program	
From the General Fund	10,155
Investment Regulation and Licensing Program	
From the General Fund	1,347
DEPARTMENT OF JUSTICE	
Highway Patrol Bureau	
Patrol Operations Program	
From the General Fund	10,562
From the Earmarked Revenue Fund	
02138 Highway ERA	3,763
From the Federal and Private Revenue Fund	
04098 Highway Patrol FPRA	255
Driver Licensing Program	
From the General Fund	21,217
From the Earmarked Revenue Fund	
02138 Highway ERA	14,504
From the Federal and Private Revenue Fund	
04098 Highway Patrol FPRA	5,053
Field Services Program	
From the General Fund	3,729
From the Earmarked Revenue Fund	
02138 Highway ERA	72,567
From the Federal and Private Revenue Fund	
04098 Highway Patrol FPRA	2,082
Commercial Vehicle Regulation Program	
From the Earmarked Revenue Fund	
02138 Highway ERA	8,484
Registrar of Motor Vehicle Bureau	
Vehicle Registration Program	
From the Earmarked Revenue Fund	
02212 Motor Vehicle ERA	41,919
ICI Division	
Law Enforcement Teletype System Program	
From the General Fund	1,583
Law Enforcement Academy Program	
From the Federal and Private Revenue Fund	
04550 Law Enforcement Academy FPRA	4,867
Fire Marshall Program	
From the General Fund	1,666
Identification Program	
From the General Fund	1,607
From the Federal and Private Revenue Fund	
04395 ICI FPRA	286
Central Service Division	
Administration Program	
From the General Fund	145
From the Earmarked Revenue Fund	
02212 Motor Vehicle ERA	192

Crime Control Division	
Board of Crime Control Program	
From the Federal and Private Revenue Fund	
04049 Criminal Justice Planning FPRA	5,117
04580 Peace Officers Standards FPRA	2,858
04594 Bureau of Criminal Statistics FPRA	81
DEPARTMENT OF PUBLIC SERVICE REGULATION	
Public Service Regulation Program	
From the General Fund	18,687
BOARD OF PUBLIC EDUCATION	
Administration Program	
From the General Fund	143
COMMISSIONER OF HIGHER EDUCATION	
Administration Program	
From the General Fund	432
Student Assistance Program	
From the General Fund	49
Higher Education Facilities Program	
From the Federal and Private Revenue Fund	
04090 Commissioner of Higher Education FPRA	180
Indian Culture Master Plan Program	
From the General Fund	17
UNIVERSITY OF MONTANA	
Instruction Program	56,256
Organized Research Program	5,766
Public Service Program	3,572
Academic Support Program	49,063
Student Services Program	38,795
Institutional Support Program	55,776
Operation and Maintenance of Plant Program	18,467
From the General Fund	125,624
From the Earmarked Revenue Fund	
02106 University Millage ERA	33,787
02650 UM Student Fee ERA	66,001
From the Federal and Private Revenue Fund	
04515 UM Federal Program FPRA	2,283
MONTANA STATE UNIVERSITY	
Instruction Program	86,016
Organized Research Program	1,189
Public Service Program	1,003
Academic Support Program	54,084
Student Services Program	39,628
Institutional Support Program	53,609
Operation and Maintenance of Plant Program	13,022
From the General Fund	142,668
From the Earmarked Revenue Fund	
02106 University Millage ERA	36,288
02630 MSU Student Fee ERA	63,878
From the Federal and Private Revenue Fund	
04302 Morrill I & I FPRA	2,486
04401 Merrill-Nelson FPRA	3,231

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MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY	
Academic Support Program	2,076
Student Services Program	2,030
Institutional Support Program	7,348
Operation and Maintenance of Plant Program	1,570
Bureau of Mines and Geology	7,708
From the General Fund	16,955
From the Earmarked Revenue Fund	
02106 University Millage ERA	1,563
02610 Montana Tech Student Fee ERA	2,214
EASTERN MONTANA COLLEGE	
Instruction Program	24,625
Academic Support Program	14,616
Student Services Program	13,040
Institutional Support Program	23,825
Operation and Maintenance of Plant Program	13,174
From the General Fund	42,422
From the Earmarked Revenue Fund	
02106 University Millage ERA	18,012
02620 Eastern Montana College ERA	27,998
From the Federal and Private Revenue Fund	
04315 EMC I & I FPRA	848
NORTHERN MONTANA COLLEGE	
Instruction Program	4,446
Public Service Program	807
Academic Support Program	6,210
Student Services Program	6,105
Institutional Support Program	7,059
Operation and Maintenance of Plant Program	4,838
From the General Fund	18,569
From the Earmarked Revenue Fund	
02106 University Millage ERA	4,220
02640 NMC Student Fee ERA	3,939
From the Federal and Private Revenue Fund	
04094 Northern Montana College FPRA	1,407
04121 NMC Restricted FPRA	1,330
WESTERN MONTANA COLLEGE	
Instruction Program	2,387
Academic Support Program	1,433
Student Services Program	920
Institutional Support Program	5,046
Operation and Maintenance of Plant Program	2,645
From the General Fund	7,707
From the Earmarked Revenue Fund	
02106 University Millage ERA	2,486
02660 WMC Student Fee ERA	1,989
From the Federal and Private Revenue Fund	
04305 WMC I & I FPRA	249
AGRICULTURAL EXPERIMENT STATION	
From the General Fund	68,357
From the Earmarked Revenue Fund	
02115 Experiment Station ERA	12,716
02580 Experiment Station Fertilizer ERA	2,239

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COOPERATIVE EXTENSION SERVICE	
From the General Fund	10,769
From the Earmarked Revenue Fund	
02560 Extension Service Fertilizer ERA	91
From the Revolving Fund	
07075 Mont. Extension Service RA	5,525
SCHOOL FOR DEAF AND BLIND	
Administration Program	
From the General Fund	1,950
From the Federal and Private Revenue Fund	
04303 Deaf & Blind I & I FPRA	236
General Services Program	
From the General Fund	2,029
From the Federal and Private Revenue Fund	
04027 Deaf & Blind FPRA	6
Care and Custody Program	
From the General Fund	13,087
MONTANA ARTS COUNCIL	
Promotion of the Arts Program	
From the General Fund	2,668
From the Federal and Private Revenue Fund	
04800 Montana Arts Council FPRA	2,224
MONTANA ADVISORY COUNCIL FOR VOCATIONAL EDUCATION	
Administration Program	
From the General Fund	24
From the Federal and Private Revenue Fund	
04471 Advisory Council for Vocational Education FPRA	882
HISTORICAL SOCIETY	
Administration Program	
From the General Fund	4,763
Library Program	
From the General Fund	9,480
From the Federal and Private Revenue Fund	
04011 Mont. Historical Society Donations FPRA	179
Museum Program	
From the General Fund	442
From the Federal and Private Revenue Fund	
04824 Historical Society Libby Dam FPRA	2,586
Magazine Program	
From the Revolving Fund	
07076 Historical Society RA	3,948
Merchandising Program	
From the Revolving Fund	
07076 Historical Society RA	3,291
BOARD OF REGENTS OF HIGHER EDUCATION	
Educational Supervision Program	
From the Earmarked Revenue Fund	
02106 University Millage ERA	154
BICENTENNIAL ADMINISTRATION	
Bicentennial Commemoration Program	
From the General Fund	78

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From the Federal and Private Revenue Fund	
04122 Bicentennial Administration	292
DEPARTMENT OF FISH AND GAME	
Centralized Services Program	
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	29,250
Environment and Information Program	
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	24,638
From the Federal and Private Revenue Fund	
04522 Fish and Game FPRA	502
Fisheries Program	
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	27,306
From the Federal and Private Revenue Fund	
04522 Fish and Game FPRA	7,154
Law Enforcement Program	
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	39,364
From the Federal and Private Revenue Fund	
04522 Fish and Game FPRA	14
04820 Motorboat Safety FPRA	1,834
Game Management Program	
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	31,425
From the Federal and Private Revenue Fund	
04522 Fish and Game FPRA	11,345
Recreation and Parks Program	
From the General Fund	4,785
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	15,099
02204 State Parks Miscellaneous ERA	6,508
02205 State Parks ERA	2,252
Planning Program	
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	2,054
Capital Outlay Program	
From the Earmarked Revenue Fund	
02131 Fish and Game ERA	5
From the Federal and Private Revenue Fund	
04522 Fish and Game FPRA	16
DEPARTMENT OF HEALTH & ENVIRONMENTAL SCIENCES	
Comprehensive Health Planning Program	
From the General Fund	574
From the Federal and Private Revenue Fund	
04413 Public Health FPRA	6,070
Management Services Program	
From the General Fund	8,219
From the Federal and Private Revenue Fund	
04413 Public Health FPRA	22,258
Communicable Disease Control Program	
From the General Fund	3,011

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From the Federal and Private Revenue Fund	
04413 Public Health FPRA	13,211
Health Services Program	
From the General Fund	23,775
From the Federal and Private Revenue Fund	
04237 Heart & Chest X-Ray Survey FPRA	490
04413 Public Health FPRA	53,101
Health Care Facilities and Manpower Program	
From the General Fund	7,301
From the Federal and Private Revenue Fund	
04413 Public Health FPRA	23,590
Environmental Health Program	
From the General Fund	21,812
From the Federal and Private Revenue Fund	
04413 Public Health FPRA	37,128
From the Revolving Fund	
07063 Board of Health Transient Lodging RA	44
Water and Waste Water Operators	
From the Earmarked Revenue Fund	
02970 Board of Certification for Water & Waste Water Operators ERA	47
DEPARTMENT OF HIGHWAYS	
General Operations Program	
From the Earmarked Revenue Fund	
02138 Highway ERA	59,157
From the Federal and Private Revenue Fund	
04410 Highway Trust FPRA	9,528
From the Revolving Fund	
07078 Highway Commission Reimb. Motor Vehicle Pool RA	556
Construction Program	
From the Earmarked Revenue Fund	
02138 Highway ERA	4,375
From the Federal and Private Revenue Fund	
04410 Highway Trust FPRA	125,340
Maintenance Program	
From the Earmarked Revenue Fund	
02138 Highway ERA	221,452
From the Federal and Private Revenue Fund	
04410 Highway Trust FPRA	301
From the Revolving Fund	
07235 Highway Equipment RA	97
Travel Promotion Program	
From the Earmarked Revenue Fund	
02138 Highway ERA	2,789
Preconstruction Program	
From the Earmarked Revenue Fund	
02138 Highway ERA	3,245
From the Federal and Private Revenue Fund	
04410 Highway Trust FPRA	53,909
Equipment Program	
From the Earmarked Revenue Fund	

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02138 Highway ERA	415
From the Revolving Fund	
07235 Highway Equipment RA	33,488
STATE MOTOR POOL	
Administration Program	
From the Revolving Fund	
07078 Highway Commission Reimb. Motor Vehicle Pool RA	1,928
07235 Highway Equipment RA	281
DEPARTMENT OF STATE LANDS	
Central Management Program	
From the General Fund	9,169
Reclamation Program	
From the General Fund	16,243
Land Administration Program	
From the General Fund	4,942
Resource Development Program	
From the Earmarked Revenue Fund	
02114 State Lands Resource Development ERA	3,413
Saline-Alkali Program	
From the General Fund	694
DEPARTMENT OF LIVESTOCK	
Centralized Services Program	
From the Earmarked Revenue Fund	
02149 Inspection and Control ERA	1,372
02151 Animal Health ERA	1,372
Animal Health Administration Program	
From the General Fund	1,227
From the Earmarked Revenue Fund	
02151 Animal Health ERA	1,227
Diagnostic Laboratory Program	
From the General Fund	8,231
From the Earmarked Revenue Fund	
02151 Animal Health ERA	8,231
Disease Control Program	
From the Earmarked Revenue Fund	
02151 Animal Health ERA	6,333
Milk and Egg Program	
From the General Fund	4,555
Inspection and Control Program	
From the Earmarked Revenue Fund	
02149 Inspection and Control ERA	39,223
From the Federal and Private Revenue Fund	
04099 Livestock Sanitary Board FPRA	2,420
Predatory Animal Control Program	
From the Earmarked Revenue Fund	
02149 Inspection and Control ERA	2,573
DEPARTMENT OF NATURAL RESOURCES & CONSERVATION	
Centralized Services Program	
From the General Fund	20,788
From the Federal and Private Revenue Fund	
04441 Cooperative Forest Management FPRA	1,681

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Oil and Gas Regulating Program	
From the Earmarked Revenue Fund	
02219 Oil and Gas ERA	6,593
Grazing Districts Supervision Program	
From the General Fund	452
From the Earmarked Revenue Fund	
02231 Grass Conservation ERA	452
From the Federal and Private Revenue Fund	
04441 Cooperative Forest Management FPRA	137
Conservation District Supervision Program	
From the General Fund	3,124
From the Federal and Private Revenue Fund	
04441 Cooperative Forest Management FPRA	137
Floodway Management Program	
From the General Fund	1,709
Water Rights Program	
From the General Fund	22,280
From the Federal and Private Revenue Fund	
04441 Cooperative Forest Management FPRA	1,289
Water Engineering Program	
From the General Fund	12,016
Water Resources and Planning Program	
From the General Fund	4,773
From the Federal and Private Revenue Fund	
04059 Water Board FPRA	4,505
Forest Management Program	
From the General Fund	18,196
From the Earmarked Revenue Fund	
02100 Timber Stand Improvement ERA	795
02160 Foresters Nursery ERA	1,986
From the Federal and Private Revenue Fund	
04441 Cooperative Forest Management FPRA	3,137
Fire Protection Program	
From the General Fund	42,460
From the Earmarked Revenue Fund	
02156 Slash and Brush Disposal ERA	4,549
From the Federal and Private Revenue Fund	
04441 Cooperative Forest Management FPRA	13,577
Institutional Forestry Work Program	
From the General Fund	1,333
High Plains Cooperative Program	
From the Federal and Private Revenue Fund	
04059 Water Board FPRA	1,630
Energy Planning Program	
From the General Fund	30,864
From the Earmarked Revenue Fund	
02999 Filing Fee Utility Siting ERA	292
DEPARTMENT OF REVENUE	
Directors Office	
From the General Fund	1,310
From the Earmarked Revenue Fund	
02138 Highway ERA	1,310

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Accounting and Auditing Division	
From the General Fund	12,500
Research Division	
From the General Fund	1,899
Legal Bureau	
From the General Fund	1,760
Liquor Division	
From the Earmarked Revenue Fund	
02093 Liquor Control Board ERA	168,731
Income-Inheritance Tax	
From the General Fund	20,084
From the Earmarked Revenue Fund	
02087 Unclaimed Property ERA	80
Corporation Tax	
From the General Fund	4,763
Property Valuation	
From the General Fund	146,803
From the Earmarked Revenue Fund	
02802 Property Tax Administration ERA	1,404
Miscellaneous Taxes	
From the General Fund	6,567
From the Earmarked Revenue Fund	
02088 Board of Equalization Cigarette Enforcement ERA	662
Motor Fuel Tax	
From the Earmarked Revenue Fund	
02138 Highway ERA	9,491
Operations Division	
From the General Fund	4,879
Data Processing Division	
From the General Fund	4,251
From the Earmarked Revenue Fund	
02093 Liquor Control Board ERA	3,078
Investigation Bureau	
From the General Fund	4,255
From the Earmarked Revenue Fund	
02093 Liquor Control Board ERA	11,458
From the Federal and Private Revenue Fund	
04754 Welfare Fraud Investigation FPRA	1,776
DEPARTMENT OF ADMINISTRATION	
Central Administration Program	
From the General Fund	4,487
Accounting Program	
From the General Fund	2,350
Architecture and Engineering Program	
From the General Fund	7,599
From the Revolving Fund	
07245 Department of Administration Construction RA	2,150
Data Processing Program	
From the Revolving Fund	
07159 Central Data Processing RA	31,369

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General Services Program	
From the General Fund	5,224
From the Revolving Fund	
07238 General Services RA	9,464
07264 Office Rent RA	2,565
Management Systems Program	
From the General Fund	2,279
Purchasing Program	
From the General Fund	14,733
Building Standards Program	
From the General Fund	980
Investment Program	
From the General Fund	3,569
From the Revolving Fund	
07260 Investments RA	1,007
Communications Program	
From the General Fund	1,482
From the Revolving Fund	
07258 Communications RA	1,071
Personnel Program	
From the General Fund	15,917
From the Federal and Private Revenue Fund	
04080 Intergovernmental Personnel FPRA	211
04880 Occupational Safety and Health FPRA	54
State Insurance	
From the General Fund	3,365
Records Management	
From the General Fund	3,049
Labor Relations Bureau Program	
From the General Fund	4,938
BOARD OF EXAMINERS	
Examination and Review Program	
From the General Fund	7,966
Vietnam Honorarium Program	
From the General Fund	153
MERIT SYSTEM BUREAU	
Personnel Services Program	
From the Earmarked Revenue Fund	
02208 Merit System Council ERA	9,741
From the Federal and Private Revenue Fund	
04766 Merit System FPRA	720
BOARD OF ADMINISTRATION	
PERS Program	
From the Earmarked Revenue Fund	
02122 PERS ERA	13,193
TEACHERS RETIREMENT BOARD	
Teachers Retirement Program	
From the Earmarked Revenue Fund	
02077 Teachers Retirement ERA	4,782
STATE TAX APPEALS BOARD	
Administration Program	
From the General Fund	915

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DEPARTMENT OF AGRICULTURE	
Administration Program	
From the General Fund	9,791
From the Federal and Private Revenue Fund	
04437 Marketing Service FPRA	898
Agricultural Statistics Program	
From the General Fund	1,165
From the Federal and Private Revenue Fund	
04652 Wheat Research and Marketing FPRA	684
Pesticide Control Program	
From the General Fund	10,310
Commercial Feed & Fertilizer Program	
From the Earmarked Revenue Fund	
02065 Commercial Fertilizer ERA	4,978
02164 Commercial Feed ERA	2,452
Horticulture Program	
From the General Fund	14,996
Wheat Research and Marketing Program	
From the Federal and Private Revenue Fund	
04652 Wheat Research and Marketing FPRA	2,195
Marketing Coordinator Program	
From the General Fund	298
Grain Laboratories Program	
From the Earmarked Revenue Fund	
02070 Grain Services ERA	6,650
Apiary Regulation Program	
From the General Fund	1,834
Transportation Program	
From the General Fund	340
From the Federal and Private Revenue Fund	
04652 Wheat Research and Marketing FPRA	365
Hail Insurance Program	
From the Earmarked Revenue Fund	
02136 Hail Insurance Administration ERA	2,822
DEPARTMENT OF BUSINESS REGULATION	
Central Services Program	
From the General Fund	1,809
From the Earmarked Revenue Fund	
02049 Milk Control ERA	489
02200 Food Distributors ERA	146
Weights and Measures Program	
From the General Fund	5,117
Finance Program	
From the General Fund	11,273
Trade Regulation Program	
From the Earmarked Revenue Fund	
02200 Food Distributors ERA	1,052
Milk Control Board Program	
From the Earmarked Revenue Fund	
02049 Milk Control ERA	8,651
Consumer Affairs Program	
From the General Fund	1,443

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DEPARTMENT OF INSTITUTIONS	
Department Operations Program	
From the General Fund	1,018
Audit and Accounting Division Program	
From the General Fund	5,611
Personnel Division Program	
From the General Fund	318
Community Based Services Division Program	
From the General Fund	5,466
Research and Evaluation Division Program	
From the General Fund	184
BOULDER RIVER SCHOOL AND HOSPITAL	
Administration Program	
From the General Fund	5,426
General Services and Physical Plant Program	
From the General Fund	30,364
Social and Behavioral Services	
From the General Fund	22,241
Clinical Services Program	
From the General Fund	10,835
Residential Services	
From the General Fund	53,928
Canteen Program	
From the Revolving Fund	456
CENTER FOR THE AGED	
Administration Program	
From the General Fund	2,100
Care and Treatment Program	
From the General Fund	4,445
General Services and Physical Plant Program	
From the General Fund	2,622
EASTMONT TRAINING CENTER	
Administration Program	
From the General Fund	774
Care and Custody Program	
From the General Fund	2,861
General Services & Physical Plant Program	
From the General Fund	421
Education and Rehabilitation Program	
From the General Fund	2,471
GALEN STATE HOSPITAL	
Administration Program	
From the General Fund	1,660
Care and Treatment Program	
From the General Fund	30,056
General Services and Physical Plant Program	
From the General Fund	18,037
Alcoholism Services	
From the General Fund	10,976
MOUNTAIN VIEW SCHOOL	
Administration Program	
From the General Fund	1,370

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Care and Custody Program	
From the General Fund	7,092
Education and Training Program	
From the General Fund	4,905
General Services and Physical Plant Program	
From the General Fund	2,616
PINE HILLS SCHOOL	
Administration Program	
From the General Fund	2,415
Care and Custody Program	
From the General Fund	9,229
General Services & Physical Plant Program	
From the General Fund	4,556
Education and Training Program	
From the General Fund	3,975
Farm Program	
From the General Fund	1,069
Clinical Services Program	
From the General Fund	4,427
MONTANA STATE PRISON	
Administration Program	
From the General Fund	3,624
Care and Custody Program	
From the General Fund	33,402
General Services Program	
From the General Fund	7,368
Education Program	
From the General Fund	867
Ranch and Dairy Program	
From the General Fund	6,806
Inmate Records Program	
From the General Fund	860
Plate Manufacturing Program	
From the General Fund	683
Inmate Training Program	
From the General Fund	844
SWAN RIVER YOUTH FOREST CAMP	
Administration Program	
From the General Fund	1,272
Counselling and Supervision Program	
From the General Fund	7,211
Education and Training Program	
From the General Fund	561
General Services Program	
From the General Fund	553
VETERANS HOME	
Administration Program	
From the General Fund	2,510
Care and Services Program	
From the General Fund	4,963
Nursing Care Program	
From the General Fund	6,057

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WARM SPRINGS STATE HOSPITAL	
Administration Program	
From the General Fund	3,504
Care and Treatment Program	
From the General Fund	175,918
General Services and Physical Plant Program	
From the General Fund	29,039
Canteen and Recreation Hall Program	
From the Revolving Fund	
07062 Warm Springs Recreation RA	1,308
LPN Training Program	
From the General Fund	1,344
Commissary Program	
From the Revolving Fund	
07062 Warm Springs Recreation RA	129
Drug Treatment Program	
From the General Fund	2,165
BOARD OF PARDONS	
Adult Probation and Parole Program	
From the General Fund	8,045
MONTANA DRUG CENTER	
Drug Treatment and Rehabilitation Project	
From the General Fund	4,057
DEPARTMENT OF INTERGOVERNMENTAL RELATIONS	
Aeronautics-Administration Program	
From the Earmarked Revenue Fund	
02188 Aeronautics Commission ERA	3,963
Airport Development	
From the Earmarked Revenue Fund	
02188 Aeronautics Commission ERA	32
Aeronautics-Navigational Aids Program	
From the Earmarked Revenue Fund	
02188 Aeronautics Commission ERA	217
Aeronautics-Safety and Compliance Program	
From the Earmarked Revenue Fund	
02188 Aeronautics Commission ERA	807
Human Resources Division Program	
From the General Fund	82
From the Federal and Private Revenue Fund	
04435 OEO Coordinator FPRA	1,719
Highway Traffic Safety Program	
From the Federal and Private Revenue Fund	
04417 Traffic Safety Coordinator FPRA	5,110
Local Government Services Program	
From the General Fund	21,747
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	381
Accounting and Management Systems Program	
From the General Fund	1,194
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	655
04537 IGR/Municipal Regulation FPRA	539

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Economic Development Program	
From the General Fund	1,098
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	1,033
Planning Program	
From the General Fund	4,022
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	4,022
Centralized Services Program	
From the General Fund	3,930
From the Earmarked Revenue Fund	
02188 Aeronautics Commission ERA	615
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	1,373
04417 Traffic Safety Coordinator FPRA	74
04435 OEO Coordinator FPRA	3,502
Old West Trail Commission Program	
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	1,198
Indian Affairs Coordinator Program	
From the General Fund	265
Research and Information Program	
From the General Fund	2,863
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	1,410
Housing Program	
From the Federal and Private Revenue Fund	
04048 Planning and Economic Development FPRA	3,018
LABOR STANDARDS DIVISION	
Labor Administration Program	
From the General Fund	7,791
Board of Personnel Appeals Program	
From the General Fund	1,842
Human Rights Bureau Program	
From the General Fund	1,353
Status of Women Bureau Program	
From the General Fund	771
EMPLOYMENT SECURITY DIVISION	
Unemployment Insurance and Employment Services Program	
From the Federal and Private Revenue Fund	
04428 Employment Security Administration FPRA	270,634
WORKMENS COMPENSATION DIVISION	
Administration Program	
From the Earmarked Revenue Fund	
02140 Workmens Compensation Division ERA	14,870
02570 Loss Adjustment ERA	11,944
From the Federal and Private Revenue Fund	
04890 OSHA Statistics Program Federal State Study FPRA	1,580
State Insurance Fund Program	
From the Earmarked Revenue Fund	
02140 Workmens Compensation Division ERA	464

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02570 Loss Adjustment ERA	19,069
Insurance Compliance Program	
From the General Fund	141
From the Earmarked Revenue Fund	
02140 Workmens Compensation Division ERA	8,114
Safety and Health Program	
From the Earmarked Revenue Fund	
02140 Workmens Compensation Division ERA	12,357
From the Federal and Private Revenue Fund	
04040 Workmens Compensation Division Health Study FPRA	1,707
ADJUTANT GENERAL	
Administration Program	
From the General Fund	805
Army National Guard Program	
From the General Fund	2,979
From the Federal and Private Revenue Fund	
04521 National Guard FPRA	1,604
Air National Guard	
From the General Fund	448
From the Federal and Private Revenue Fund	
04521 National Guard FPRA	953
CIVIL DEFENSE	
Coordination Program	
From the General Fund	897
From the Federal and Private Revenue Fund	
04510 Civil Defense FPRA	898
Fuel Allocation	
From the General Fund	4,137
Calibration and Maintenance	
From the Federal and Private Revenue Fund	
04526 Civil Defense Calibration FPRA	259
Shelter Development	
From the Federal and Private Revenue Fund	
04470 Civil Defense Community Shelter FPRA	137
Natural Disaster Response	
From the Federal and Private Revenue Fund	
04510 Civil Defense FPRA	63
Training and Education	
From the Federal and Private Revenue Fund	
04510 Civil Defense FPRA	521
PROFESSIONAL AND OCCUPATIONAL LICENSING	
Central Services Program	
From the Earmarked Revenue Fund	
02001 Professional Occupational Administrative Services ERA	3,478
Board of Abstractors	
From the Earmarked Revenue Fund	
02110 Board of Abstractors ERA	28
Board of Architects	
From the Earmarked Revenue Fund	
02107 Architectural Examiners ERA	179

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Board of Barbers	
From the Earmarked Revenue Fund	
02233 Barber Examiners ERA	497
Board of Cosmetologists	
From the Earmarked Revenue Fund	
02185 Cosmetology Board ERA	4,093
Electrical Board	
From the Earmarked Revenue Fund	
02050 Board of Electricians ERA	15,499
Board of Hearing Aid Dispensers	
From the Earmarked Revenue Fund	
02027 Board of Hearing Aid Dispensers ERA	50
Board of Horse Racing	
From the Earmarked Revenue Fund	
02195 Horse Racing Commission ERA	329
Board of Massage Therapists	
From the Earmarked Revenue Fund	
02028 Massage Board ERA	10
Board of Medical Doctors	
From the Earmarked Revenue Fund	
02152 Board of Medical Examiners ERA	5,217
Board of Nursing	
From the Earmarked Revenue Fund	
02224 Board of Nursing ERA	2,370
Board of Nursing Home Administrators	
From the Earmarked Revenue Fund	
02026 Board of Nursing Home Administrators ERA	601
Board of Optometrists	
From the Earmarked Revenue Fund	
02215 Optometry Examiners ERA	8,790
Board of Pharmacists	
From the Earmarked Revenue Fund	
02220 Board of Pharmacy ERA	846
Board of Plumbers	
From the Earmarked Revenue Fund	
02190 Plumbing Examiners ERA	834
Board of Professional Engineers and Land Surveyors	
From the Earmarked Revenue Fund	
02133 Professional Engineers ERA	1,404
Board of Public Accountants	
From the Earmarked Revenue Fund	
02029 Board of Public Accountancy ERA	475
Board of Real Estate	
From the Earmarked Revenue Fund	
02078 Real Estate ERA	14,682
Board of Water Well Contractors	
From the Earmarked Revenue Fund	
02171 Water Well Contractors ERA	1,115
Board of Sanitarians	
From the Earmarked Revenue Fund	
02035 Sanitarians Registration ERA	26

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SOCIAL AND REHABILITATION SERVICES	
Social Services Program	
From the General Fund	25,025
From the Federal and Private Revenue Fund	
04422 Public Welfare FPRA	236,794
From the Revolving Fund	
07138 County Reimbursement RA	44,678
Eligibility Determination Program	
From the General Fund	8,935
From the Federal and Private Revenue Fund	
04422 Public Welfare FPRA	65,798
From the Revolving Fund	
07138 County Reimbursement RA	55,113
Centralized Services Program	
From the General Fund	13,631
From the Federal and Private Revenue Fund	
04422 Public Welfare FPRA	26,461
Staff Development Program	
From the General Fund	8,151
From the Federal and Private Revenue Fund	
04422 Public Welfare FPRA	26,478
Field Services Program	
From the General Fund	2,427
From the Federal and Private Revenue Fund	
04422 Public Welfare FPRA	4,712
Vocational Guidance Program	
From the General Fund	11,314
From the Federal and Private Revenue Fund	
04418 Vocational Rehabilitation FPRA	47,825
04422 Public Welfare FPRA	201
Disability Determination Program	
From the Federal and Private Revenue Fund	
04418 Vocational Rehabilitation FPRA	23,968
Youth Development Program	
From the General Fund	2,756
From the Federal and Private Revenue Fund	
04418 Vocational Rehabilitation FPRA	8,309
04422 Public Welfare FPRA	125
Visual Services Program	
From the General Fund	2,869
From the Federal and Private Revenue Fund	
04418 Vocational Rehabilitation FPRA	11,475
Developmental Disabilities Program	
From the General Fund	333
From the Federal and Private Revenue Fund	
04418 Vocational Rehabilitation FPRA	14
04422 Public Welfare FPRA	6,552
Aging Services Program	
From the General Fund	2,572
From the Federal and Private Revenue Fund	
04030 Commission on Aging FPRA	1,617
04422 Public Welfare FPRA	6,869

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Veterans Affairs Program
From the General Fund 22,645

Section 2. The limitations on salary adjustments for state employees for state employees for the 1975 biennium contained in section 12, House Bill 747, Session Laws of 1974 are hereby removed.

Section 3. This act is effective upon passage and approval.

Approved April 21, 1975.

HOUSE BILL NO. 285

AN ACT APPROPRIATING MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of the executive branch, offices of the judicial branch, and offices of the legislative branch of state government.

(2) "Approving authority" means the governor, or his designated representative, for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; or the appropriate legislative committees for legislative branch agencies, unless otherwise provided by law.

Section 2. An agency may request and the approving authority may approve a budget amendment to:

(1) obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund and other than receipts to the state from the United States government made available under the provisions of the State and Local Fiscal Assistance Act of 1972; or

(2) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(3) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium. All requests for budget amendments shall be submitted through the budget director.

Section 3. In approving a budget amendment, the approving authority shall certify

(1) specific additional services to be provided as a result of a higher expenditure level;

(2) that no other alternative is available to provide the additional services;

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(3) that the additional proposed services have not been considered and rejected by the legislature; and

(4) that no commitment, implied or otherwise, is made for increased future general fund support.

Section 4. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unexpended balance of any appropriation shall revert to the fund from which it was appropriated.

Section 5. Expenditures shall not exceed appropriations except as otherwise provided in this act.

Section 6. Each department, agency and program of the executive branch shall submit to the budget director by July 1 of each fiscal year a detailed budget within the limits of the appropriation which includes the position and salary of each employee. Expenditures shall be made only in accordance with budgets approved by the budget director for executive branch agencies; by the chief justice of the supreme court for judicial branch agencies; and by the appropriate legislative committees for legislative branch agencies.

Section 7. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the 44th Legislature, unless a budget amendment has been approved by the appropriate approving authority.

Section 8. All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 9. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) the legislative branch;

(3) public schools;

(4) the judicial branch; or

(5) salaries of elected officials, during their term of office.

Section 10. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 11. The provisions set forth in this section are limitations on the appropriations made in this act, provided, however, that these limitations do not apply to the distribution of public funds under the superintendent of public instruction. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by

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its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials, and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against non-general fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury pursuant to provisions of Title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any agency subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
BOARD OF PUBLIC EDUCATION		
Administration program		
From the general fund	$ 29,756	$ 31,879
Total	29,756	31,879
SCHOOL FOR THE DEAF AND BLIND		
Administration program		
From the general fund	89,630	93,967
General services program		
From the general fund	140,268	150,112
Education program		
From the general fund	528,151	605,181
From the federal and private revenue fund		
04027 Deaf and blind FPRA	253,194	265,802
04303 Deaf and blind interest and income FPRA	75,491	54,159

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Care and custody program		
From the general fund	211,246	225,394
Total	1,297,980	1,394,615
MONTANA ARTS COUNCIL		
Promotion of the arts program		
From the general fund	47,423	64,298
From the federal and private revenue fund		
04800 Montana arts council FPRA	27,626	14,033
Total	75,049	78,331
LIBRARY COMMISSION		
General library services program		
From the general fund	207,396	204,549
Library networks program		
From the general fund	82,070	84,168
Institutional library services program		
From the general fund	86,347	89,763
Library services for the physically handicapped program		
From the general fund	91,003	94,315
Administration program		
From the general fund	48,895	51,961
Total	515,711	524,756
MONTANA ADVISORY COUNCIL FOR VOCATIONAL EDUCATION		
Administration program		
From the general fund	29,626	33,106
From the federal and private revenue fund		
04471 Advisory council for vocational education FPRA	38,818	36,766
Total	68,444	69,872
HISTORICAL SOCIETY BOARD OF TRUSTEES		
Administration program		
From the general fund	84,385	90,216
Library and archives program		
From the general fund	131,115	142,422
From the federal and private revenue fund		
04011 Montana historical society donations FPRA	4,636	0
Museum and galleries program		
From the general fund	35,097	41,406
From the earmarked revenue fund		
02182 Historical society ERA	22,096	22,656

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From the federal and private revenue fund		
04011 Montana historical society donations FPRA	2,168	2,292
04824 Historical society Libby dam FPRA	21,888	17,484
Magazine program		
From the revolving fund		
07076 Historical society RA	124,706	131,264
Merchandising program		
From the revolving fund		
07076 Historical society RA	246,008	251,649
Total	672,099	699,389
DEPARTMENT OF ADMINISTRATION		
Educational television program		
From the general fund	154,000	

The above appropriation is intended to provide for the payment of all costs incident to ceasing operation of the educational broadcasting commission created by chapter 215, Laws of 1974 effective June 30, 1975. No appropriation is made for payments to satisfy any lease executed by the educational broadcasting commission.

All funds received from the sale of assets of the commission shall revert to the general fund.

BICENTENNIAL ADMINISTRATION		
Bicentennial commemoration program		
From the general fund		
For local grants	200,000	0
From the federal and private revenue fund		
04122 Bicentennial administration FPRA	88,811	52,500
Total	288,811	52,500

Approved May 1, 1975.

HOUSE BILL NO. 286

AN ACT APPROPRIATING MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of the executive branch, offices of the judicial branch, and offices of the legislative branch of state government.

(2) "Approving authority" means the governor, or his designated representative, for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; or the appropriate legislative committees for legislative branch agencies, unless otherwise provided by law.

Section 2. An agency may request and the approving authority may approve a budget amendment to:

(1) obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund and other than receipts to the state from the United States government made available under the provisions of the State and Local Fiscal Assistance Act of 1972; or

(2) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(3) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium. All requests for budget amendments shall be submitted through the budget director.

Section 3. In approving a budget amendment, the approving authority shall certify:

(1) specific additional services to be provided as a result of a higher expenditure level;

(2) that no other alternative is available to provide the additional services;

(3) that the additional proposed services have not been considered and rejected by the legislature; and

(4) that no commitment, implied or otherwise, is made for increased future general fund support.

Section 4. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unexpended balance of any appropriation shall revert to the fund from which it was appropriated.

Section 5. Expenditures shall not exceed appropriations except as otherwise provided in this act.

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Section 6. Each department, agency and program of the executive branch shall submit to the budget director by July 1 of each fiscal year a detailed budget within the limits of the appropriation which includes the position and salary of each employee. Expenditures shall be made only in accordance with budgets approved by the budget director for executive branch agencies; by the chief justice of the supreme court for judicial branch agencies; and by the appropriate legislative committees for legislative branch agencies.

Section 7. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the 44th legislature, unless a budget amendment has been approved by the appropriate approving authority.

Section 8. All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 9. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) the legislative branch;

(3) public schools;

(4) the judicial branch; or

(5) salaries of elected officials, during their term of office.

Section 10. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 11. The provisions set forth in this section are limitations on the appropriations made in this act, provided, however, that these limitations do not apply to the distribution of public funds under the superintendent of public instruction. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials, and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made

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in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against non-general fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury pursuant to provisions of Title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any agency subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
LEGISLATIVE AUDITOR		
Audit and examination program		
From the general fund	$617,150	$665,925
Contracted Services		
From general fund	75,000	75,000
Fiscal analysis program		
From the general fund	168,758	181,372
Total	860,908	922,297
LEGISLATIVE COUNCIL		
Legislative research program		
From the general fund	830,098	0
Legislative services program		
From the general fund	220,885	0
Retrieval system program		
From the general fund	37,500	0
Recodification program		
From the general fund	260,990	0
Council of state governments dues program		
From the general fund	32,320	0
Western states forestry task force		
From the general fund	2,500	0
Total	1,384,293	0

Any appropriation balances remaining in the legislative council as of June 30, 1976, are hereby reappropriated for the fiscal year ending June 30, 1977.

COMMISSION ON UNIFORM STATE LAWS		
Commission on uniform state laws program		
From the general fund	5,000	5,000
Total	5,000	5,000

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ENVIRONMENTAL QUALITY COUNCIL		
Environmental quality program		
From the general fund	141,610	148,806
From the federal and private revenue fund		
04020 Environmental quality council FPRA	30,000	26,000
Total	171,610	174,806
CONSUMER COUNCIL		
Administration program		
From the earmarked revenue fund		
02700 Consumer council tax ERA	125,753	128,397
Total	125,753	128,397
LEGISLATURE		
From the general fund for the payment of the employer's contribution to the public employees' retirement system for those enrolled in accordance with section 68-1602(1), R.C.M. 1947.	17,500	17,500
Total	17,500	17,500
DISTRICT COURT JUDGES		
District judges program		
From the general fund	862,128	862,128
Total	862,128	862,128
LAW LIBRARY		
Central operations program		
From the general fund	48,915	51,103
Total	48,915	51,103
REVISED CODES OF MONTANA		
Revised codes of Montana program		
From the general fund	49,500	49,500
Total	49,500	49,500
SUPREME COURT		
Maintenance of supreme court program		
From the general fund	331,905	345,581
Boards and commissions program		
From the general fund	13,995	15,338
Total	345,900	360,919

Included in the appropriation are sufficient funds to hire a court administrator to perform the administrative functions of the judicial branch.

COUNTY ATTORNEYS		
Legal services program		
From the general fund	332,858	332,858
Total	332,858	332,858
GOVERNOR'S OFFICE		
Executive office program		
From the general fund	373,766	397,345
Mansion maintenance program		
From the general fund	42,775	45,686

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Office of budget and program planning program		
From the general fund	526,780	560,096
Human services research program		
From the general fund	33,000	66,000
From the federal and private revenue fund		
04980 Governor's office FPRA	132,000	99,000

A continuation of this program in any form beyond June 30, 1977, is prohibited. The general fund appropriation is contingent upon the program receiving federal funds in the amounts shown.

Mental health advisory council program		
From the general fund	20,000	20,000
Citizen's advocate office program		
From the general fund	47,819	50,592
Total	1,176,140	1,238,719
LIEUTENANT GOVERNOR		
Lieutenant governor program		
From the general fund	129,254	135,706
Total	129,254	135,706
FEDERAL-STATE COORDINATOR		
Federal-state coordinator program		
From the general fund	93,900	102,653
Total	93,900	102,653
GOVERNOR'S MANPOWER PLANNING		
Governor's manpower planning program		
From the federal and private revenue fund		
04393 Governor's manpower planning FPRA	252,238	270,577
Total	252,238	270,577
DRUG COORDINATOR		
Drug coordinator program		
From the federal and private revenue fund		
04920 Drug coordinator FPRA	109,730	125,154
Integrated drug abuse reporting process program		
From the federal and private revenue fund		
04920 Drug coordinator FPRA	65,582	70,159
Total	175,312	195,313
COMMISSION ON LOCAL GOVERNMENT		
Local government modernization program		
From the general fund	263,903	212,469
From the federal and private revenue fund		
04051 Local government research FPRA	150,000	150,000
Total	413,903	362,469

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A continuation of this program in any form beyond the automatic repealer date of June 30, 1977, as specified in chapter 221, section 8, Laws 1974 is prohibited.

SECRETARY OF STATE'S OFFICE		
Records management program		
From the general fund	366,075	378,578
Commissioner of campaign finances and practices program		
From the general fund	78,496	80,435
Total	444,571	459,013
STATE TREASURER'S OFFICE		
Treasury management program		
From the general fund	126,354	130,421
Local assistance program		
From the earmarked revenue fund		
02138 Highway ERA	3,000,000	3,000,000
Total	3,126,354	3,130,421
STATE AUDITOR'S OFFICE		
Management and control program		
From the general fund	280,718	281,672
Central payroll division program		
From the general fund	122,283	123,613
From the revolving fund		
07255 Central payroll operating RA	75,000	75,000
Administrative support program		
From the general fund	101,412	111,451
Insurance regulation and licensing program		
From the general fund	428,214	457,518
From the earmarked revenue fund		
02082 Police ERA	532,178	532,178
02218 Firemen's disability ERA	636,372	636,372
Investment regulation and licensing program		
From the general fund	71,118	81,903
Total	2,247,295	2,299,707
SUPERINTENDENT OF PUBLIC INSTRUCTION'S OFFICE		
Chief state school officer program		
From the general fund	195,622	211,274
Educational services program		
From the general fund	1,024,382	1,126,288
From the earmarked revenue fund		
02121 Traffic and safety education ERA	41,827	45,445
From the federal and private revenue fund		
04017 Donable property FPRA	110,115	120,179

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04416 Public instruction FPRA	1,120,031	1,163,725
04770 Traffic education mobile simulator FPRA	17,000	17,000
From the revolving fund		
07022 School lunch program RA	142,876	155,946
07023 Audiovisual and media library RA	103,501	113,969
07100 Public instruction RA	332,643	370,039
Distribution of public funds program		
From the general fund		
School lunch	381,145	401,760
Transportation reimbursements	2,875,000	2,975,000
School foundation	16,879,320	31,790,000
From the earmarked revenue fund		
02121 Traffic and safety education ERA	573,421	630,763
02217 Public school equalization ERA	(all funds available)	
02217 public school equalization ERA regional education programs and services	1,358,000	1,508,000
02250 State permissive school levies ERA	14,000,000	15,000,000
From the federal and private revenue fund		
04600 Federal revenue sharing FPRA for school foundation	3,500,000	0

All revenue sharing funds allocated to Montana for the period from July 1, 1976, to June 30, 1977, are appropriated to the earmarked revenue fund, account 02250 state permissive levy.

Total	74,391,414	92,325,294

If House Bill 566, forty-fourth legislature, becomes law, the following funds are transferred from the Superintendent of Public Instruction's office to the State Board of Vocational Education.

STATE BOARD OF VOCATIONAL EDUCATION

Educational services program		
From the general fund	165,805	175,217
From the federal and private revenue fund vocational education account	360,709	393,671
Distribution of public funds program		

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From the general fund		
Five vocational technical centers	3,616,319	4,245,790
Vocational secondary and postsecondary education	679,830	742,415
From the earmarked revenue fund		
02900 Vo-Tech centers tuition ERA	123,585	144,734
Total	4,946,248	5,701,827
DEPARTMENT OF JUSTICE		
Legal Services Division		
Legal services program		
From the general fund	297,322	317,866
Escheated estates program		
From the earmarked revenue fund		
02085 Escheated estates ERA	17,500	18,225
County attorney training coordinator program		
From the general fund	18,296	41,724
From the federal and private revenue fund		
04926 Legal services division FPRA	20,000	0
Total	353,128	377,815
Highway Patrol Bureau		
Patrol operations program		
From the general fund — operations	389,567	422,867
From the earmarked revenue fund		
02138 Highway ERA — operations	116,694	124,715
02138 Highway ERA — retirement	49,659	49,659
Driver licensing program		
There shall be no increase in personnel to implement Senate Bill 254, forty-fourth legislature.		
From the general fund	815,420	881,032
From the earmarked revenue fund		
02138 Highway ERA	345,259	368,460
From the federal and private revenue fund		
04098 Highway patrol FPRA	45,666	51,273
From the revolving fund		
07246 Montana highway patrol ID card RA	500	500

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Field services program		
From the general fund	1,208,175	1,326,975
From the earmarked revenue fund		
02138 Highway ERA	2,270,672	2,422,849
Commercial vehicle regulation program		
From the earmarked revenue fund		
02138 Highway ERA	332,889	358,564
Total	5,574,501	6,006,894
Registrar of Motor Vehicles		
Vehicle registration program		
From the earmarked revenue fund		
02212 Motor vehicle ERA	882,339	864,582
Total	882,339	864,582
Investigation, Communication, and Identification Division		
Criminal investigation program		
From the general fund	112,955	121,803
Law enforcement teletypewriter system program		
From the general fund	125,434	194,545
From the federal and private revenue fund		
04591 Law enforcement teletype system FPRA	100,000	50,000
From the revolving fund		
07056 Attorney general teletype system RA	63,000	63,000
Law enforcement academy program		
From the general fund	107,538	207,413
From the earmarked revenue fund		
02720 Law enforcement academy ERA	17,379	17,379
From the federal and private revenue fund		
04550 Law enforcement academy FPRA	176,809	79,109
Fire marshal program		
From the general fund	149,541	160,271
Identification program		
From the general fund	63,841	68,423
Law enforcement advisory council program		

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From the general fund	795	795
Total	917,292	962,738
Central Service Division		
Administration program		
From the general fund	146,177	155,975
From the earmarked revenue fund		
02212 Motor vehicle ERA	14,904	16,904
Total	161,081	172,879
Motor Vehicle Division		
Administration program		
From the general fund	11,296	12,220
From the earmarked revenue fund		
02138 Highway ERA	11,271	12,148
02212 Motor vehicle ERA	11,298	12,175
Total	33,865	36,543
Crime Control Division		
Planning program		
From the general fund	129,989	145,868
From the federal and private revenue fund		
04049 Criminal justice planning FPRA	528,783	550,302
04580 Peace officers standards FPRA	232,376	207,827
04594 Bureau of criminal statistics FPRA	361,007	377,537
04870 Indian coordinator FPRA	24,488	26,290
Action program		
From the general fund	75,300	84,300
Appropriation is made for the life of the grant to which it may be matched. All matched funds as of June 30, 1975, are hereby reappropriated for the matching period.		
Total	1,351,943	1,392,124
DEPARTMENT OF PUBLIC SERVICE REGULATION		
Public service regulation program		
From the general fund	639,428	700,758
Consultant contracted services		
From general fund	50,000	50,000
From the general fund for expenses incident to the Upper Great Plains Transportation Institute	25,000	25,000
From the federal and private revenue fund		

04900 Natural gas safety program		
FPRA	14,000	16,000
Total	728,428	791,758

Approved May 1, 1975.

HOUSE BILL NO. 289

AN ACT APPROPRIATING MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of the executive branch, offices of the judicial branch, and offices of the legislative branch of state government.

(2) "Approving authority" means the governor, or his designated representative, for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; or the appropriate legislative committees for legislative branch agencies, unless otherwise provided by law.

Section 2. An agency may request and the approving authority may approve a budget amendment to:

(1) obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund and other than receipts to the state from the United States government made available under the provisions of the State and Local Fiscal Assistance Act of 1972; or

(2) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(3) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium. All requests for budget amendments shall be submitted through the budget director.

Section 3. In approving a budget amendment, the approving authority shall certify:

(1) specific additional services to be provided as a result of a higher expenditure level;

(2) that no other alternative is available to provide the additional services;

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(3) that the additional proposed services have not been considered and rejected by the legislature; and

(4) that no commitment, implied or otherwise, is made for increased future general fund support.

Section 4. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unexpended balance of any appropriation shall revert to the fund from which it was appropriated.

Section 5. Expenditures shall not exceed appropriations except as otherwise provided in this act.

Section 6. Each department, agency and program of the executive branch shall submit to the budget director by July 1 of each fiscal year a detailed budget within the limits of the appropriation which includes the position and salary of each employee. Expenditures shall be made only in accordance with budgets approved by the budget director for executive branch agencies; by the chief justice of the supreme court for judicial branch agencies; and by the appropriate legislative committees for legislative branch agencies.

Section 7. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the 44th Legislature, unless a budget amendment has been approved by the appropriate approving authority.

Section 8. All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 9. The governor may reduce any appropriation by not more than fifteen percent (15%) except appropriations for:

(1) payment of interest and retirement of the state debt;

(2) the legislative branch;

(3) public schools;

(4) the judicial branch; or

(5) salaries of elected officials, during their term of office.

Section 10. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 11. The provisions set forth in this section are limitations on the appropriations made in this act, provided, however, that these limitations do not apply to the distribution of public funds under the superintendent of public instruction. It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by

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its provisions the amount and conditions under which the appropriations can be expended. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials, and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against non-general fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury pursuant to provisions of Title 79, R.C.M. 1947, except that the department of administration may, pursuant to section 79-603, R.C.M. 1947, permit any agency subject to this act to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

Section 12. The following moneys are appropriated for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
DEPARTMENT OF INSTITUTIONS		
Central Office		
Department operations program		
From the general fund	$220,672	$245,752
From the revolving fund		
07257 Department of institutions building maintenance RA	10,000	10,000
Audit and accounting division program		
From the general fund	456,792	438,619
From the federal and private revenue fund		
04570 Institutions central operations FPRA	30,000	30,000
Board program		
From the general fund	9,105	11,070

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Personnel division program		
From the general fund	153,878	169,592
Research and evaluation division program		
From the general fund	35,041	36,897
Total	915,488	941,930

None of the following appropriation shall be spent for any direct or indirect costs of other agencies, programs or entities present or future within the department of institutions.

Any funds allocated to a non-state agency shall be allocated only subsequent and pursuant to the submission of an operational plan by the non-state agency to the community based services program and the plan's approval by the community based services program.

Such a plan shall include but not be limited to the following:

1. Total proposed and historic costs;

2. Number of clients to be served;

3. Provision that any nongeneral funds available be spent prior to the allocation of any of the following appropriation;

4. The nature and level of services to be rendered;

5. Measurable performance indicators.

The department of institutions shall review at least biannually the non-state agency's adherence to the approved plan. The department may suspend allocation of funds if significant divergencies from the plan are found.

Community based services		
Community based services program		
From the general fund	2,611,284	2,658,704
From the federal and private revenue fund		
04540 Community services FPRA	83,000	83,000
Total	2,694,284	2,741,704
Boulder River School and Hospital		
Administration program		
From the general fund	589,543	631,509
General services and physical plant program		
From the general fund	1,744,632	1,592,048
Social and behavioral services program		
From the general fund	851,938	821,209
From the federal and private revenue fund		
04025 Boulder river school education		

expansion FPRA	279,829	279,829
Clinical services program		
From the general fund	918,693	793,360
Residential services program		
From the general fund	4,285,801	2,839,508
Food service program		
From the general fund	995,198	1,045,214
Canteen program		
From the general fund	22,479	23,400
From the revolving fund		
07248 Boulder river school canteen RA	12,000	12,000
Total	9,700,113	8,038,077
Children's center		
Maintenance program		
From the general fund	77,675	86,943
Total	77,675	86,943
Center for the aged		
Administration program		
From the general fund	86,876	99,207
Care and treatment program		
From the general fund	395,369	540,224
General services and physical plant program		
From the general fund	114,184	139,698
Food service program		
From the general fund	174,853	217,812
Resident welfare program		
From the general fund	18,145	18,958
Total	789,427	1,015,899
Eastmont Training Center		
Administration program		
From the general fund	43,117	46,253
Care and custody program		
From the general fund	103,709	110,411
General services and physical plant program		
From the general fund	59,184	62,395
Education and rehabilitation program		
From the general fund	143,189	151,733
Food service program		
From the general fund	32,199	34,188
From the federal and private revenue fund		
04440 Eastmont training center FPRA	1,200	1,200
Total	382,598	406,180
Galen State Hospital		

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Administration program		
From the general fund	197,992	216,626
Care and treatment program		
From the general fund	1,787,448	1,880,403
General services and physical plant program		
From the general fund	799,432	836,014
Alcoholism services		
From the general fund	631,297	672,363
Food service program		
From the general fund	641,284	681,383
Total	4,057,453	4,286,789
Mountain View School		
Administration program		
From the general fund	89,765	96,637
Care and custody program		
From the general fund	476,523	505,132
From the federal and private revenue fund		
04407 Mountain view school FPRA	9,600	10,440
Education and training program		
From the general fund	196,573	205,247
From the federal and private revenue fund		
04407 Mountain view school FPRA	31,674	34,439
General services and physical plant program		
From the general fund	160,086	177,474
Food service program		
From the general fund	93,580	95,636
Total	1,057,801	1,125,005
Pine Hills School		
Administration program		
From the general fund	135,278	146,535
From the federal and private revenue fund		
04304 Pine hills school interest and income FPRA	2,103	2,105
Care and custody program		
From the general fund	438,534	483,405
From the federal and private revenue fund		

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04304 Pine hills school interest and income FPRA	49,498	33,644
General services and physical plant program		
From the general fund	305,770	310,583
From the federal and private revenue fund		
04039 Pine hills school FPRA	13,317	13,317
04304 Pine hills school interest and income FPRA	13,534	13,436
Education and training program		
From the general fund	281,587	319,864
From the federal and private revenue fund		
04039 Pine hills school FPRA	76,340	59,005
Clinical services program		
From the general fund	236,235	250,132
From the federal and private revenue fund		
04039 Pine hills school FPRA	16,500	16,500
Food service program		
From the general fund	101,357	107,232
From the federal and private revenue fund		
04039 Pine hills school FPRA	7,800	7,800
Farm program		
From the general fund	117,067	101,901
Total	1,794,920	1,865,459
Montana State Prison		
Administration program		
From the general fund	231,954	251,620
Care and custody program		
From the general fund	2,051,189	2,188,202
From the federal and private revenue fund		
04438 Montana state prison FPRA	21,200	21,200
04595 MT state prison law enforcement assistance admin. FPRA	25,000	12,500
General services program		
From the general fund	612,928	659,681
Education program		
From the general fund	166,370	175,236

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Ranch and dairy program		
From the general fund	162,046	0
From the revolving fund		
07999 Prison ranch RA	790,979	884,512
Inmate records program		
From the general fund	47,252	49,223
License plate manufacturing program		
From the general fund	100,000	0
From the earmarked revenue fund		
02212 Motor vehicle ERA	919,245	56,017
Food service program		
From the general fund	391,195	424,822
Total	5,519,358	4,723,013
Swan River Youth Forest Camp		
Administration program		
From the general fund	70,182	73,411
Counseling and supervision program		
From the general fund	149,818	163,986
From the federal and private revenue fund		
04044 Swan river youth camp FPRA	74,000	74,000
From the revolving fund		
07251 Swan river clothing store RA	15,000	16,000
Education and training program		
From the general fund	48,408	49,496
From the federal and private revenue fund		
04044 Swan river youth camp FPRA	9,000	9,000
General services program		
From the general fund	67,007	64,549
Food service program		
From the general fund	55,849	56,431
Total	489,264	506,873
Veterans' Home		
Administration program		
From the general fund	71,453	76,121
Care and services program		
From the general fund	133,357	145,962
From the federal and private revenue fund		
04415 Soldiers home FPRA	76,650	76,650

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Nursing care program		
From the general fund	103,976	119,522
From the federal and private revenue fund		
04415 Soldiers home FPRA	119,720	119,720
Food service program		
From the general fund	176,870	184,970
Total	682,026	722,945
Warm Springs State Hospital		
Administration program		
From the general fund	466,335	508,817
Care and treatment program		
From the general fund	7,900,277	11,414,476
From the federal and private revenue fund		
04600 Federal revenue sharing FPRA	3,000,000	0
General services and physical plant program		
From the general fund	1,776,646	1,808,690
Food service program		
From the general fund	1,366,146	1,370,734
Canteen and recreation hall program		
From the revolving fund		
07062 Warm Springs recreation RA	213,515	248,677
Education of handicapped children program		
From the federal and private revenue fund		
04433 Mental hygiene FPRA	8,840	8,840
Licensed practical nurse training program		
From the general fund	36,197	40,201
From the federal and private revenue fund		
04433 Mental hygiene FPRA	39,000	39,000
Commissary program		
From the revolving fund		
07062 Warm Springs recreation RA	50,237	49,777
Total	14,857,193	15,489,212
Board of Pardons		
Adult probation and parole program		
From the general fund	607,237	644,554

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Multipurpose residential services program		
From the general fund	21,333	146,666
From federal and private revenue fund		
04560 Board of Pardons FPRA	192,000	0
Total	820,570	791,220
Southwestern Montana Drug Center		
Drug treatment and rehabilitation program		
From the general fund	99,875	122,789
From the federal and private revenue fund		
04650 Montana Drug Center FPRA	295,185	295,185
Lighthouse Drug Program		
From the general fund	98,918	108,918
Total	493,978	526,892

Included in the above appropriations are $7,484,633 in fiscal 1976 and $6,675,952 in fiscal 1977 for personal services including all employee benefits at Boulder River School and Hospital and $12,409,608 in fiscal 1976 and $13,338,854 in fiscal 1977 for personal services including all employee benefits at Warm Springs State Hospital. Reversions to the general fund shall be made in the amount that expenditures are less than the amounts provided.

Approved May 1, 1975.

HOUSE BILL NO. 335

AN ACT APPROPRIATING MONEYS TO THE DEPARTMENT OF AGRICULTURE FROM THE GENERAL FUND TO CREATE AN INSECT SURVEILLANCE, ASSISTANCE AND CROPLAND SPRAYING ADMINSTRATION PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the biennium ending June 30, 1977, there is appropriated from the general fund the sum of eighty thousand dollars ($80,000) to the department of agriculture to create an insect surveillance and monitoring program throughout the state, and to administer and coordinate cropland spraying programs.

Approved April 14, 1975.

HOUSE BILL NO. 486

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF

JUSTICE FOR THE BIENNIUM ENDING JUNE 30, 1977, FOR THE ESTABLISHMENT AND OPERATION OF AN AUTOMATED MOTOR VEHICLE INFORMATION SYSTEM, AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purpose of establishing and operating an automated motor vehicle information system, including automated vehicle registration, the following moneys are appropriated for the biennium ending June 30, 1977:

	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
TO THE DEPARTMENT OF JUSTICE		
(1) Central services division		
Administration program		
From the general fund	$166,730	
From the earmarked revenue fund		$166,946
02212 - Motor vehicle account		
(2) Registrar of motor vehicles		
Vehicle registration program		
From the general fund	$11,234	
From the federal and private revenue fund	$50,000	
From the earmarked revenue fund		$97,754
02212 - Motor vehicle account		

Section 2. Any additional funds generated during the biennium to the earmarked revenue fund (motor vehicle account 02212) above the amount required for the establishment and operation of an automated motor vehicle information system and the moneys necessary for the normal operation of the registrar of motor vehicles, shall be deposited in the general fund as reimbursement up to the sum of the amounts appropriated therefrom under this act.

Approved April 12, 1975.

HOUSE BILL NO. 520

AN ACT APPROPRIATING MONEYS TO THE DEPARTMENT OF JUSTICE FOR THE REMAINDER OF FISCAL YEAR 1975, FOR FISCAL YEAR 1976 AND FISCAL YEAR 1977 TO DECEMBER 31, 1976, FOR INVESTIGATION AND PROSECUTION OF WORKMEN'S

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COMPENSATION DIVISION RELATED MATTERS; AND PROVIDING FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of the executive branch, offices of the judicial branch, and offices of the legislative branch of state government.

(2) "Program" means a combination of planned efforts to provide a service.

(3) "Approved budget amendment" means approval of a request submitted through the budget director by the governor, or his designated representative, for executive branch agencies; by the chief justice of the supreme court for judicial branch agencies; and by the appropriate legislative committees for legislative branch agencies, to:

(a) obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund; or

(b) transfer appropriations, including general fund appropriations, between programs within a state agency; or

(c) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 2. The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unexpended balance of any appropriation shall revert to the fund from which it was appropriated. In case of necessity, an appropriation not expended during the first fiscal year of the biennium may be expended during the second fiscal year by approved budget amendment.

Section 3. The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. Financing for new or expanded programs from sources

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other than the general fund may be made available by approved budget amendment.

Section 5. Each agency shall submit to the budget director on or before July 1 of each fiscal year, an operational plan within the limits of appropriations which includes the position and salary of all officers and employees. The salary of the chief administrator of each agency shall be determined by the appointing authority. Informational copies of operational plan changes shall be submitted to the budget director.

Section 6. No new program may be established and no existing program may be expanded beyond the scope of the programs approved by the legislature in the 1977 biennial budget, unless the new program or the program expansion and its method of financing is approved by the governor or his designated representative, after presentation through the budget director.

Section 7. Transfers of appropriated funds between programs of an agency may be made only by an approved budget amendment.

Section 8. When an agency receives federal funds as a reimbursement for the cost of administering a federal program and this cost was financed by a general fund appropriation, the cost must be transferred from the general fund to the federal and private revenue fund.

Section 9. Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials, and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to section 82-110, R.C.M. 1947.

Section 10. The following moneys are appropriated for the fiscal year ending June 30, 1975:

DEPARTMENT OF JUSTICE

Legal Services Division

Workmen's compensation prosecution program

From the general fund	
Personal services	$ 150,257
Retainer for chief prosecutor	30,000
Subsistence	17,400
Operating expenses	21,000
Equipment	6,000
Total	$ 224,657

The following moneys are appropriated for the biennium ending June 30, 1977:

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	For Fiscal Year Ending 6/30/76	For the Period Beginning 7/1/76 and Ending 12/31/76
DEPARTMENT OF JUSTICE		
Legal Services Division		
Workmen's compensation prosecution program		
From the general fund		
Personal services	$ 356,364	$ 183,983
Retainer for chief prosecutor	60,000	30,000
Subsistence	34,800	17,400
Operating expenses	42,000	21,000
Total	$ 493,164	$ 252,383

Section 11. A report shall be made quarterly to the legislative audit committee on the progress and expenditures of the workmen's compensation prosecution.

Section 12. The budget director may request, and the attorney general shall furnish, any information necessary to insure proper accountability of all expenditures by the attorney general of moneys appropriated under this act.

Section 13. All dictating, recording, and transcribing equipment shall be purchased by the office of attorney general and shall be transferred to the department of administration December 31, 1976.

Section 14. This act is effective upon passage and approval.

Approved February 11, 1975.

HOUSE BILL NO. 622

AN ACT TO APPROPRIATE FROM THE GENERAL FUND FORTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS TO THE DEPARTMENT OF NATURAL RESOURCES FOR A STUDY OF THE NORTHERN PORTION OF FLATHEAD LAKE AND THE UPPER PORTION OF THE FLATHEAD RIVER DRAINAGE BASIN FOR THE BIENNIUM ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is appropriated forty-seven thousand five hundred dollars ($47,500) from the general fund to the department of natural resources and conservation for a study of the northern portion of the Flathead Lake and the upper portion of the Flathead river drainage basin for the biennium ending June 30, 1977.

Section 2. The department of natural resources and conservation, in conjunction with the department of fish and game and other state agen-

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cies and institutions with relevant expertise, shall prepare the study for presentation to the forty-fifth legislature. The study shall:

(1) Compile and analyze all previous biophysical data pertinent to the hydrology and limnology of the northern portion of Flathead Lake and the upper portion of the Flathead river drainage basin.

(2) Estimate current allocations and levels of need for the water resources of this watershed and evaluate the probable effect that the existing water uses have upon the quality and quantity of water as well as the biophysical equilibrium of the land-stream-lake system.

(3) Evaluate as a function of location and time the probable impact upon the land-stream-lake system of the development of the Canadian Cabin Creek coal deposits and the attendant urbanization of this headwaters region, as well as the impacts arising from changes in domestic land-use and flood control.

(4) Synthesize data and contain a summary report and recommendations for the future.

Section 3. A reversion shall be made to the general fund in the amount of any federal funds received to carry out the purpose of this act.

Approved April 29, 1975.

HOUSE BILL NO. 679

AN ACT APPROPRIATING MONIES TO THE DEPARTMENT OF INSTITUTIONS FOR EMPLOYEE SALARY INCREASES FOR THE FISCAL YEAR ENDING JUNE 30, 1975, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Salary increases for employees of the department of institutions shall be retroactive to January 1, 1975, for employees of record at time of passage and approval of this act. Salary increases shall be as follows:

1. Professional personnel who presently earn less than $20,000 per year	$100 per month
2. Support personnel	$133 per month
3. Direct care personnel	$149 per month

4. Craft union personnel in accordance with negotiated agreements with the governor's office, in which agreement increases average one hundred twenty-two dollars ($122) per month.

Section 2. The following monies are appropriated for salary increases for employees of the department of institutions for the fiscal year ending June 30, 1975:

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DEPARTMENT OF INSTITUTIONS	
Central Office	
From the general fund	$ 48,469
Boulder River School and Hospital	
From the general fund	491,706
Children's Center	
From the general fund	66,637
Center for the Aged	
From the general fund	25,516
Eastmont Training Center	
From the general fund	23,633
Galen State Hospital	
From the general fund	273,295
Mountain View School	
From the general fund	42,924
Pine Hills School	
From the general fund	104,268
From the federal and private revenue fund	
04304 Pine Hills school I & I FPRA.	2,352
State Prison	
From the general fund	223,855
Swan River Youth Forest Camp	
From the general fund	22,797
Veterans' Home	
From the general fund	43,727
Warm Springs State Hospital	
From the general fund	880,154
Board of Pardons	
From the general fund	24,624
Drug Center	
From the federal and private revenue fund	
04650 Drug center FPRA	28,844

Section 3. This bill is effective upon passage and approval.

Approved March 12, 1975.

HOUSE BILL NO. 692

AN ACT TO APPROPRIATE MONEYS FOR VIETNAM HONORARIUM PROGRAM FOR THE FISCAL YEAR ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. The following moneys are appropriated for the biennium ending June 30, 1977:

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DEPARTMENT OF ADMINISTRATION
Board of examiners
Vietnam honorarium program
From the general fund $ 710,000

Approved March 19, 1975.

HOUSE BILL NO. 698

AN ACT APPROPRIATING MONEYS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR GRANTS TO MINERAL AND SILVER BOW COUNTIES UNDER PROVISIONS OF THE PUBLIC WELFARE ACT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. The following moneys are appropriated for the biennium ending June 30, 1975: to the department of social and rehabilitation services, economic assistance program.

From the general fund
For Silver Bow county $1,099,000
From the general fund
For Mineral county 51,600

Section 2. This appropriation is intended to provide grant-in-aid to Silver Bow and Mineral counties under section 71-311.

Section 3. Effective date. This act is effective on passage and approval.

Approved April 18, 1975.

HOUSE BILL NO. 700

AN ACT ESTABLISHING A TEMPORARY FOREST-WORK PROGRAM TO PROVIDE EMPLOYMENT FOR CITIZENS OF THE STATE OF MONTANA IN PROJECTS FOR THE MAINTENANCE, CONSERVATION AND IMPROVEMENT OF THE FOREST LANDS OF THE STATE, AND APPROPRIATING NINETY-THREE THOUSAND DOLLARS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE FISCAL YEAR ENDING JUNE 30, 1975, AND ONE HUNDRED THOUSAND DOLLARS FOR THE BIENNIUM ENDING JUNE 30, 1977; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

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Section 1. The following moneys are appropriated:

(1) TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

	For the Fiscal Year Ending June 30, 1975
Forest Management Program	
From the General Fund	$ 93,000

(2) TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

	For the Biennium Ending June 30, 1977	
	For Fiscal Year Ending 6/30/76	For Fiscal Year Ending 6/30/77
Forest Management Program		
From the General Fund	$ 50,000	$50,000

This appropriation is for capital and operational costs associated with receipt of federal funds on at least a one-to-one matching basis to pay salaries for emergency employment, and if such federal funds are not forthcoming, the above amounts shall revert to the general fund.

Section 2. Any funds unexpended from section 1 (1) of this appropriation as of June 30, 1975 are reappropriated for the fiscal year ending June 30, 1976.

Section 3. The governor, or his designated representative, may approve a request submitted through the budget director to:

(1) expand the program from funds that were not available for consideration by the legislature but which have become available from a source other than the state's general fund; or

(2) expend remaining balances of the first fiscal year appropriations, including general fund appropriations, during the second fiscal year of the biennium.

Section 4. The moneys appropriated by this act shall be used to establish a temporary forest-work program to employ Montana citizens in forest land maintenance, conservation, and improvement projects on state-owned forest land and slash disposal on private forest lands where slash disposal is the obligation of the state.

Section 5. This act is effective on its passage and approval.

Approved April 18, 1975.

HOUSE BILL NO. 705

AN ACT APPROPRIATING ONE HUNDRED FORTY THOUSAND

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DOLLARS FROM THE GENERAL FUND TO THE MONTANA BUREAU OF MINES TO FUND THE STUDY OF GROUNDWATER RESOURCES DIRECTED BY HOUSE JOINT RESOLUTION NO. 54 FOR THE BIENNIUM ENDING JUNE 30, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is appropriated one hundred forty thousand dollars ($140,000) from the general fund to the Montana bureau of mines for the biennium ending June 30, 1977, to fund the study of groundwater resources directed by House Joint Resolution No. 54.

Approved April 18, 1975.

HOUSE BILL NO. 712

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1977, AND PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. For the purposes of this act, unless otherwise stated:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, unit of the university system, and other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing and major repair projects authorized in this act.

(3) "Approved budget amendment" means approval by the budget director of a request submitted through the construction and maintenance division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriations of another capital project within that agency, or to obtain financing to expand a project from funds which were not available for consideration by the legislature, but which have become available.

Section 2. No existing capital project may be expanded beyond the scope of the project as approved by the forty-fourth legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. If a capital project is jointly financed by an appropriation or appropriations from state sources as well as by appropriations from other sources, the funds provided by appropriation from state sources shall be decreased by the amount that the funds received from other sources

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exceeds the amount from other sources appropriated by the legislature in the 1977 biennial budget, provided that the decrease does not jeopardize the receipt of the funds to be received from other sources.

Section 4. All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 5. Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are hereby reappropriated until June 30, 1977, for the purposes for which originally appropriated.

Section 6. If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional or void, such decision shall not affect the validity of the remaining portions of this act.

Section 7. The following money is appropriated from indicated funds and accounts to the director, department of administration, for the biennium ending June 30, 1977, for the indicated capital projects.

	For the Biennium Ending 6/30/77	
	06142 Long Range Bldg. Program Account Bond Proceeds & Ins. Clearance Fund	04120 Capital Bldg., FPRA
EXECUTIVE BRANCH		
SUPT. OF PUBLIC INSTRUCTION		
Build vo-tech complex, Missoula	$890,000	
(If the electors in the benefited area have not voted or otherwise agreed to pay the local share of the cost of the vo-tech complex on South Avenue, which amounts to four hundred ten thousand dollars ($410,000), by July 1, 1976, the money appropriated as the state's share from the long-range building fund shall be reduced to six hundred forty-six thousand dollars ($646,000) for construction of the facility at Fort Missoula.)		
Complete vo-tech, Helena airport	257,402	
DEPT. OF ADMINISTRATION		
Improve capital complex parking lot	100,000	
Acquire land as per capital complex development plan	400,000	$100,000
Architecture and engineering operations program	185,000	
preplanning projects	200,000	
DEAF AND BLIND SCHOOL		
Replace and/or recoat roofs	52,000	
Reroof superintendent's residence	3,000	
Sandblast and paint exterior walls,		

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main building	40,000	
EASTERN MONTANA COLLEGE		
Construct science building addition	1,350,000	
MONTANA HISTORICAL SOCIETY		
Rebuild front entry of veterans and pioneers memorial building	15,000	
Dampproof foundation wall of basement storage area	10,000	
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY		
Provide miscellaneous improvements	100,000	
Acquire land on west park side	32,000	
Acquire land and construct a library building	1,420,000	
		04530 Const. Acct., FPRA
MONTANA STATE UNIVERSITY		
Complete 7th and 8th floors of Leon Johnson Hall	531,600	75,000
Remodel clothing lab., Herrick Hall	53,200	
Remodel 4th floor of Reed Hall	53,700	
Remodel 4th floor of library	50,000	50,000
NORTHERN MONTANA COLLEGE		
Provide general campus improvements	75,000	
UNIVERSITY OF MONTANA		
Install safety improvements	500,000	
Provide major maintenance	400,000	
WESTERN MONTANA COLLEGE		
General campus improvements and fire prevention facilities	62,000	
DEPT. OF FISH AND GAME		
Renovate facilities at Lewis & Clark state park, phase II	75,000	75,000
Develop Bannack state monument	37,500	37,500
Develop state parks and recreational area	200,000	200,000
Makoshika state park	50,000	50,000
Newland Creek recreation area	150,000	
DEPT. OF INSTITUTIONS		
CENTRAL OFFICE		
Establish at least two nursing homes	2,500,000	500,000
BOULDER RIVER SCHOOL AND HOSPITAL		
Boulder laundry	200,000	
Improve sewer system	50,000	200,000
Repair water tower	25,000	
Install master lock system	25,000	

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CENTER FOR THE AGED		
Install fire safety modifications	15,000	
Reroof main building	35,000	
To supplement the appropriation in Senate Bill 531, forty-third legislature	155,000	
EASTMONT TRAINING CENTER		
Install air conditioning	55,000	
Install curbs, gutters and paving	25,985	
GALEN STATE HOSPITAL		
Install fire safety projects, phase II	175,000	
Renovate elevator	3,000	
Repair water tower	25,000	
MONTANA VETERANS' HOME		
Provide irrigation system	6,000	
Construct new plumbing shop	35,000	
MOUNTAIN VIEW SCHOOL		
Renovate boiler room	12,000	
Construct new water line	15,000	
Reroof cottages Cottonwood & Spruce	45,000	
PINE HILLS SCHOOL		
Construct new boiler house	180,000	
SWAN RIVER YOUTH FOREST CAMP		
Renovate kitchen floors & walls	6,200	
Construct four trailer pads	8,000	
Remodel discipline unit	55,000	
WARM SPRINGS STATE HOSPITAL		
Laundry	500,000	
Renovate Warren building	350,000	
Renovate general hospital	421,000	
Demolish dangerous buildings	20,000	
Landscape grounds and pave streets, phase I	79,390	
Construct sewage disposal facility	125,000	375,000
Demolish old boiler plant smoke stack	8,400	
Construct clean up area for food service	116,400	
MONTANA STATE PRISON		
To supplement the appropriation in Senate Bill 734, forty-third legislature	826,361	
DEPT. OF LABOR AND INDUSTRY		
Renovate Helena office	27,000	
DEPT. OF MILITARY AFFAIRS		
Renovate armories, Miles City, Glendive & Sidney	154,000	
Construct armory, Missoula	250,000	627,000

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DEPT. OF NATURAL RESOURCES & CONSERVATION	
Construct district complex at Kalispell	153,700
Paving, Missoula foresters office	20,000
DEPT. OF REVENUE	
Construct new liquor warehouse and administrative facility	1,920,000

Section 8. There is appropriated $6,029,072 from the general fund and $3,921,724 from federal and private revenue fund, federal revenue sharing capital construction account 04601 to the bond proceeds and insurance clearance fund, long-range building program account 06142 for the biennium ending June 30, 1977. Expenditures shall be made from the long-range building program account only in the amounts appropriated in this act.

Section 9. (1) The authorization to renovate cottages, Boulder River school and hospital, in Senate Bill No. 54 of the forty-third legislature is hereby reauthorized for fire safety modifications in six (6) new cottages and conversion of cottages VI and VII to offices.

(2) Also, the authorization of ninety-five thousand dollars ($95,000) from the long-range building fund to construct Carbon Hills Watershed in House Bill No. 1119 of the forty-third legislature is hereby reauthorized, if needed for award of project, to construct dormitory addition, Center for the Aged, Lewistown.

Section 10. The following money is appropriated from indicated funds and accounts to the director, department of administration, for the biennium ending June 30, 1977, for the indicated capital projects.

	02131 Fish and Game ERA	04522 Fish and Game FPRA
DEPARTMENT OF FISH AND GAME		
Provide furnishings, Helena office building	4,000	
Construct security fence, region one headquarters	3,000	
Construct Ninepipe storage shed	10,000	15,000
Construct Fresno dike and fence	9,200	13,800
Construct Warm Springs machine shed	4,000	6,000
Construct Fox Lake dike and spillway	2,000	3,000
Land development for wildlife purposes	12,300	18,450

	04940 Recreation FPRA
Acquire and develop fishing access and small game sites	900,000

	02207 Fish and Game Snowmobile Registration ERA	04186 State Park FPRA
	900,000	900,000

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Acquire and develop snowmobile areas	30,000 02138 Highway ERA	30,000
DEPARTMENT OF HIGHWAYS		
Upgrade present facilities	150,000	
Construct equipment garage at Hamilton	42,000	
Construct equipment garage at Summit	75,000	
Construct equipment garage at MacDonald Pass	52,000	
Construct sandhouse at Bozeman Hill	17,000	
Construct vehicle storage building at Neihart	28,000	
Construct sandhouse at Harlem	15,000	
Construct equipment garage at Malta	32,000	
Construct equipment garage at Flowing Wells	12,000	
Construct sandhouse at Broadus	18,000	
Construct equipment garage at Winnett	24,800	
Construct heated equipment garage at Philipsburg	32,000	
Construct sandhouse at MacDonald Pass West	15,000	
Construct sandhouse at Bozeman	15,000	
Construct tool and sign building at Cut Bank	4,500	
Construct equipment garage at Richey	12,000	
Construct sandhouse at Beaverslide	15,000	
Construct garage addition at White Sulphur Springs	30,000 06064 Highway Building Headquarters & Complex BPICA	
Construct new state headquarters complex	7,350,428 02115 Experiment Station ERA	04530 Construction Grant Acct. FPRA
MONTANA STATE UNIVERSITY		
Construct greenhouse and headhouse addition	102,200	
Construct machine storage shop and office bldg.	88,500	
Storm sewer, married student housing		58,200

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	02188 Aeronautics Commission ERA	04530 Construction Grant Acct. FPRA	04830 Aeronautics Commission FPRA
DEPARTMENT OF INTER-GOVERNMENTAL RELATIONS			
Construct general aviation utility airports	$100,000	$100,000	$300,000
Construct security fencing at Clinton and Wolf Creek airports	9,800		
Construct security addition at West Yellowstone airport	22,770		103,730
Provide runway and approach lighting at Lincoln airport	18,875		56,625
New Helena airport hangar	195,809		

Approved April 21, 1975.

HOUSE BILL NO. 716

AN ACT TO APPROPRIATE MONEYS FOR THE OPERATION OF THE LEGISLATURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is appropriated from the general fund for the operation of the forty-fourth legislature the sum of fifty thousand dollars ($50,000).

Section 2. Any sums remaining in this appropriation after adjournment of the forty-fourth legislature may be expended in accordance with applicable law and legislative resolution for the organization of a special session or the organization of the forty-fifth legislature.

Section 3. This act is effective upon passage and approval.

Approved April 21, 1975.

HOUSE BILL NO. 717

AN ACT TO APPROPRIATE MONEYS TO THE WORKMENS COMPENSATION DIVISION TO FUND THE PROVISIONS OF SENATE BILL 54, LAWS OF 1975.

Be it enacted by the Legislature of the State of Montana:

Section 1. The following money is appropriated to the workmens compensation division for the biennium ending June 30, 1977, to pay silicosis benefits to those persons made eligible by section 71-1010.1 (senate bill 54 of the forty-fourth legislature):

	Fiscal Year Ending 6/30/76	Fiscal Year Ending 6/30/77
From the general fund	$268,750	$267,750

Approved April 29, 1975.

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RESOLUTIONS

ENACTED BY THE

Forty-fourth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1975

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RESOLUTIONS

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS AND THE PRESIDENT OF THE UNITED STATES OF AMERICA TO REVISE THE FEDERAL LAWS RELATING TO AID TO DEPENDENT CHILDREN IN ORDER TO ELIMINATE SEXUAL DISCRIMINATION IN CERTAIN PROVISIONS.

WHEREAS, the constitution of the state of Montana prohibits discrimination based on sex; and

WHEREAS, the Montana legislature is in the process of implementing this constitutional provision; and

WHEREAS, two (2) provisions of the Revised Codes of Montana, 1947, sections 71-501 and 71-508 provide for aid to dependent children who are deprived of parental support or care by reason of the unemployment of the father and provide funding for county programs of aid to dependent children who are deprived of support and care by the unemployment of the father; and

WHEREAS, the provisions of these two sections result in different eligibility standards for fathers and mothers; and

WHEREAS, federal regulations are such as to prohibit the elimination of the sexual discrimination in these statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress and the President of the United States are requested to effect such changes in federal statutes and regulations which will not distinguish between persons because of sex and which will permit states to eliminate such sexual discrimination as exists in statutes such as sections 71-501 and 71-508, R.C.M. 1947.

BE IT FURTHER RESOLVED, that the Secretary of State is instructed to send copies of this resolution to the President of the United States, the Secretary of the United States Senate, the Clerk of the United States House of Representatives, the Secretary of Health, Education and Welfare and to each Montana Congressman.

Approved March 12, 1975.

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

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REPRESENTATIVES OF THE STATE OF MONTANA URGING ALL SCHOOL OFFICIALS, THE SUPERINTENDENT OF PUBLIC INSTRUCTION, AND THE MONTANA HIGH SCHOOL ASSOCIATION TO PROMOTE EQUITY BETWEEN BOYS' AND GIRLS' INTERSCHOLASTIC ACTIVITIES.

WHEREAS, interscholastic activities are an integral part of the educational process for girls as well as for boys, and

WHEREAS, inequities exist between girls' and boys' interscholastic activities in such areas as the salaries of the coaches of girls' teams, the use of facilities for interscholastic activities by girls' teams, and the number of opportunities available for girls to participate in interscholastic activities, and

WHEREAS, the Department of Health, Education and Welfare, under the authority of the United States government, has declared that federal assistance may not be available to schools that discriminate in extracurricular activities on the basis of sex, and

WHEREAS, equality of opportunity can be best achieved in an atmosphere where those in positions of influence or leadership do their best to promote that opportunity.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislature urges all school officials including coaches, administrators and trustees, the Superintendent of Public Instruction, and the Montana High School Association to actively and aggressively promote equity between boys' and girls' interscholastic activities.

Approved January 30, 1975.

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PROVINCES OF BRITISH COLUMBIA, ALBERTA AND SASKATCHEWAN, THE STATE OF MONTANA, AND THE FEDERAL GOVERNMENTS OF CANADA AND THE UNITED STATES TO TAKE AFFIRMATIVE ACTION TO ASSURE THAT COAL AND OTHER ENERGY RESOURCE DEVELOPMENT ALONG THE NORTH FORK OF THE FLATHEAD RIVER, THE PROPOSED POPLAR RIVER PROJECT, AND THE SASKATCHEWAN PROJECT, WILL NOT DEGRADE THE EXISTING HIGH QUALITY OF THE AIR AND WATER ALONG THE FLATHEAD RIVER AND OTHER RIVERS, AND THAT COPIES OF THIS RESOLUTION BE SENT TO THE RESPONSIBLE GOVERNMENT AUTHORITIES.

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WHEREAS, the Canadian headwaters of the North Fork of the Flathead River are proposed for open-pit coal mining and there exists great interest in further developing open-pit mining as well as developing oil and gas resources along the North Fork of the Flathead River, and

WHEREAS, the Montana Flathead River drainage, which includes the west slope of Glacier-Waterton International Peace Park and all of Flathead Lake, is enjoyed by thousands of Montanans and Canadians because the unspoiled air and water provide an excellent region for year-around outdoor recreation, and

WHEREAS, the economic stability of the Flathead valley depends upon preserving the high quality of the air and water vital to agriculture and the forests.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana expresses its deep concern that the development of open-pit coal mining and of other energy resources along the headwaters of the North Fork of the Flathead River, on both sides of the international border, should not be permitted to degrade the high quality of the air and water in the Flathead River drainage, and

BE IT FURTHER RESOLVED, that the State of Montana urges the instrumentalities of the governments of Canada, the Province of British Columbia, the United States, and Montana to exercise the greatest attention when reviewing and issuing mining permits for developing the coal and other energy resources along the Flathead River, the proposed Poplar River Project, Saskatchewan Project, and other river drainages and to take affirmative action in order to assure that all reasonable precautions will be taken to preserve the high quality of the air and water all along the Flathead River, Poplar River Project, Saskatchewan Project, and other rivers, and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Minister for External Affairs of the Dominion of Canada, the Secretary of State of the United States of America, the Premier and Parliament of the Province of British Columbia, the Governor of the State of Montana, and the International Joint Commission.

BE IT FURTHER RESOLVED, that the Montana Congressional delegation pursue the subject matter of this resolution with appropriate federal and international agencies, and that the Secretary of State send copies of this resolution to each member of the delegation.

Approved March 19, 1975.

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

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REPRESENTATIVES OF THE STATE OF MONTANA TO OPPOSE THE VETO OF THE FEDERAL STRIP MINING BILL BY PRESIDENT FORD.

WHEREAS, President of the United States, Gerald Ford, vetoed the federal strip mining bill, Senate Bill 425 of the United States Congress, and

WHEREAS, both houses of the Congress of the United States supported the bill, and

WHEREAS, the state of Montana will be greatly affected by this veto, and

WHEREAS, this veto is an usurpation of the right of the people to minimal environmental protection.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That these legislative bodies adamantly oppose the veto of the federal strip mining bill by President Ford.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States.

Approved March 29, 1975.

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PRESCRIBING THE DUTIES AND COMPENSATION OF LEGISLATIVE OFFICERS AND EMPLOYEES.

WHEREAS, it is necessary to establish the salaries and positions of legislative officers and employees for the Forty-fourth Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following positions are paid for the number of days as authorized by the legislative administration committee of each house, at the indicated compensation per day, which may be computed on an hourly basis for accounting purposes:

secretary of the senate.....$46/day
(includes $20 per diem for expenses)
chief clerk of the house.....$46/day
(includes $20 per diem for expenses); and
sergeant-at-arms.....$45/day
(includes $20 per diem for expenses)

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chaplain $12/day

(2) The following positions are compensated for the number of hours for the calendar week as authorized by the legislative administration committee of each house at the indicated hourly wages. Each employee shall receive a seven percent (7%) increase for each year of legislative experience not to exceed two (2) years.

Position	Wage per hour
(a) Offices of the secretary of the senate and the chief clerk of the house:	
assistant secretary of senate and assistant chief clerk	$4.36
chief stenographer	4.17
bills clerk	4.08
bills coordinator	4.08
journal clerk	4.08
bills distributor	4.08
secretary to secretary of senate or chief clerk	4.08
assistant chief stenographer and committee secretary	4.08
assistant bills coordinator	3.59
assistant journal clerk	3.59
assistant bills clerk	3.59
secretary to assistant secretary of senate or assistant chief clerk	4.08
assistant bills distributor	3.41
stenographer	3.18
reading clerk	3.18
posting clerk	3.18
clerk-typist	3.03
proofreader	2.93
typist	3.03
(b) Offices of the sergeants-at-arms:	
assistant sergeant-at-arms	4.36
supply clerk	3.18
parking attendant	2.72
watchman and doorkeeper	2.72
page	2.00
(c) Office of public information, fixed salaries:	
public information director	4.36
public information supervisor	4.00
head guide	3.49
guide	3.23
(d) Office of the business manager:	
business manager	4.36
assistant business manager	4.00
clerk-typist	3.03

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(e) Miscellaneous positions:
committee researcher.....4.51
secretary to an officer
of the legislature.....4.08
committee secretary.....4.08
aide to Representative R. Budd Gould.....$600/month

(3) The duties of the secretary of the senate, the chief clerk of the house, and the sergeants-at-arms, are as prescribed by law, by legislative rule, and by the presiding officer of each house. The duties of committee researchers and secretaries are as prescribed by the chairman of the employing committees. The duties of the business manager and public information office are as prescribed by the joint committee on legislative administration. The duties of every other position scheduled in the preceding section are as prescribed by the committee employing the person in such position; and

(4) The salaries specified in this resolution shall be paid for every day of the Forty-fourth Legislature during which the employee works. The presiding officer of each house may authorize the legislative administration committee, when necessary, to continue the employment and compensation of officers and employees if provided for by a simple resolution of each house, except for the position of business manager.

(5) The first payment under this bill shall be made in any manner that the state auditor deems necessary to facilitate prompt payment of wages.

Approved January 28, 1975.

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PETITIONING THE UNITED STATES CONGRESS TO REVIEW THE SOCIAL SECURITY LAWS FOR THE PURPOSE OF ELIMINATING SEXUAL DISCRIMINATION FROM THE SOCIAL SECURITY SYSTEM.

WHEREAS, when the United States Congress enacted the first Social Security Act in 1935, one of the assumptions then current was that very few married women held employment outside the home, and

WHEREAS, section 202 (q) of the Social Security Act, now codified, as amended, at 42 U.S. Code section 402 (q), reduces a woman's social security entitlements under various circumstances involving her marital status and bearing no relationship to her contributions into the social security fund, and

WHEREAS, now that the United States Congress has adopted and presented to the states an Equal Rights amendment to the national constitution, the Congress should in the same spirit eliminate from the social security statutes any discriminatory classifications based upon sex.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress should study the social security laws, and prepare amendments thereto, designed to eliminate any discrimination based upon sex or upon the assumption that most women cannot or do not combine marriage with gainful employment.

BE IT FURTHER RESOLVED, That the Secretary of State transmit copies of this resolution as petitions to the Senate and House of Representatives of the United States, and to the Montana Congressional delegation.

Approved February 14, 1975.

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRESIDENT OF THE UNITED STATES, THE UNITED STATES SENATE BIPARTISAN AD HOC COMMITTEE ON THE WORLD FOOD CRISIS AND MONTANA'S CONGRESSIONAL DELEGATION TO FOSTER AND SPONSOR THE INCLUDED PROVISIONS OF THIS RESOLUTION DIRECTED AT RESOLVING THE WORLD FOOD CRISIS.

WHEREAS, the world food crisis is part of the larger pattern of global interdependence. The crisis is linked directly and systematically with questions of environment, population, economic relationships, political, and military power.

WHEREAS, world hunger and malnutrition are part of this complex pattern and must be attacked on two levels: immediate assistance programs to prevent starvation in many regions in the world; and a long-range program to increase food production, especially in less industrialized nations.

WHEREAS, the long-range program must strike at the root problem of underdevelopment which plagues the peoples of many nations. Plans for agricultural and livestock development require cooperation by the United States government, the poorer nations, the FAO and voluntary agencies including all religious faiths.

WHEREAS, it is not enough, however, that such development merely foster economic growth. Development must significantly reach the "little farmer" and so-called marginal people, and reduce the gap between the wealthy and the poor.

WHEREAS, moreover, the food crisis poses for the United States, both domestic and international implications. An appropriate legislative response for the United States must include the series of interrelated

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activities at the level of public policy—legislative program, community information and education.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

Acting through this joint august body, a program of public discussion be proposed directed toward influencing appropriate executive and legislative action which, in a systematic and organized way, will seek to achieve national policies effectively dealing with the food issue, internationally and domestically.

The fundamental premise of the program is that food is a unique commodity and a sacred resource. The guidelines for legislative initiatives meriting the support of this august body are as follows:

FIRST, increase genuine agricultural and livestock development overseas; technical assistance and development programs must be expanded to promote greater food production for less industrialized nations;

SECOND, increase funding for Food for Peace (PL480); as an immediate step, increase substantially food allocations through Title II of Food for Peace (Humanitarian Aid) and resist efforts to use food as a political and strategic weapon;

THIRD, modify U.S. trade policies to lower trade barriers and to provide just prices for imports from poor countries. Special trade preferences for these nations' exports and substantially increased adjustment assistance for adversely affected U.S. workers and industries must be part of this revised trade policy;

FOURTH, assure American farmers and ranchers of a fair return for their capital and labor. The productivity and viability of American agriculture must be maintained. Serious disruption of this sector of the economy could adversely affect the world food crisis;

FIFTH, promote more equitable distribution of resources in the United States. Areas of legislation in this regard are the following: expanding programs of food stamps and school lunches, providing special assistance to the elderly, the unemployed and the poor, revising income tax burdens and to restructuring land use policies;

SIXTH, protect both family farmers who are often subject to severe economic pressures in the agricultural chain of food production, processing and sales, and also consumers in middle and lower income categories;

SEVENTH, modify the operation of the free market system, especially the impact of the large corporation, when it stands in the way of justice;

EIGHTH, since the food crisis is a long-term problem as well as an immediate concern, it will be necessary to keep the structural dimensions of the issue, both in its factual and moral aspects, before the public, and

BE IT FURTHER RESOLVED that copies of this joint resolution be sent by the Secretary of State to the President of the United States, the United States Senate Bipartisan Ad Hoc Committee on the World Food Crisis; Senators Hatfield, Clark, McGovern, Case, and Humphrey; also,

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members of the Montana Congressional Delegation; Senator Mansfield, Senator Metcalf, Representative Melcher, and Representative Baucus.

Approved March 19, 1975.

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE APPOINTMENT OF A SELECT COMMITTEE TO INVESTIGATE THE PRACTICES OF BEEF PRICING IN MONTANA.

WHEREAS, Montana is a large producer and processor of beef cattle, and

WHEREAS, the market price of cattle when sold by the producer is much less than the price paid for processed beef by the consumer, and

WHEREAS, beef that is raised in the state, sold in the state, and processed in the state should be priced lower than beef that passes through interstate commerce, and

WHEREAS, federal efforts to investigate beef pricing practices require that the beef be involved in interstate commerce, and

WHEREAS, any federal regulation affecting beef pricing practices would not necessarily affect beef raised, sold, and processed exclusively in Montana, and

WHEREAS, it is deemed advisable that the public be fully informed of beef pricing practices in Montana and protected against price-fixing, and

WHEREAS, the Legislature in the exercise of its powers and duties has the right to investigate any subject, hold hearings, and compel witnesses to testify.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a select committee of nine (9) persons be appointed to investigate beef pricing practices in Montana, particularly the prices that accrue between the time the stock grower sells his cattle and the time the consumer purchases the processed beef, and to investigate the pricing practices of any other Montana livestock it deems necessary, and

BE IT FURTHER RESOLVED, that the select committee shall have the authority to conduct its investigation under the procedures defined in Part X, Chapter 75, Sections 795, 800, 801, and 802 of Mason's Manual of Legislative Procedure, including the compelling of witnesses to testify before it, and

BE IT FURTHER RESOLVED, that the select committee report any possible or alleged violations of law it discovers in connection with its

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investigation to the proper county authorities in the county in which the violation is alleged to have been committed, and

BE IT FURTHER RESOLVED, that the select committee may request and shall receive the services of the Legislative Auditor and the Legislative Council if it so desires in the performance of its investigation, and

BE IT FURTHER RESOLVED, that the select committee may request the services of the various county attorneys in the performance of its investigation, and

BE IT FURTHER RESOLVED, that the select committee may hire investigators and support staff, if it so deems necessary, pursuant to proper appropriations, and

BE IT FURTHER RESOLVED, that the nine (9) committee members shall be appointed in the following manner:

(a) the President of the Senate shall appoint four (4) Senate members, not more than two (2) from the same political party;

(b) the Speaker of the House of Representatives shall appoint five (5) House members, not more than three (3) from the same political party; and

(c) the chairman shall be chosen by the Speaker of the House of Representatives and the vice chairman by the President of the Senate of the nine (9) member committee; and

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the Forty-fifth Montana Legislature and to the Montana Congressional Delegation.

Approved February 20, 1975.

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. DEPARTMENT OF AGRICULTURE TO CONTINUE THE ACP PROGRAMS, SPECIFICALLY COST-SHARING FOR LINING DITCHES OF IRRIGATION SYSTEMS.

WHEREAS, water resources are an essential state and national resource; and

WHEREAS, irrigation is essential to the development of certain agricultural lands; and

WHEREAS, ditching is a method for transporting water for irrigation; and

WHEREAS, the present system of earth ditches allows seepage and loss of this valuable resource; and

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WHEREAS, the cost of improving existing irrigation ditches is expensive for the individual landowner; and

WHEREAS, it is necessary for the health and welfare of the state and nation to conserve and use water wisely.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, the U.S. Department of Agriculture continue the ACP programs, specifically cost-sharing for lining ditches of irrigation systems.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the U.S. Secretary of Agriculture and to the President of the United States.

Approved March 20, 1975.

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEPARTMENT OF ADMINISTRATION TO PROCEED WITH DISPATCH IN IMPLEMENTING AND ENFORCING THE BUILDING CODE FOR MOBILE HOMES.

WHEREAS, many Montanans who have purchased mobile homes have found poor construction in the structures, with flimsy materials, defective wiring and plumbing, and rapid deterioration all being frequent problems, and

WHEREAS, the building codes council within the department of administration has recently responded to these problems by promulgating a building code for mobile homes sold in Montana, and

WHEREAS, the action of the building codes council will be effective only if it is vigorously enforced.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the department of administration should give top priority within its building codes enforcement programs to measures which will promptly achieve full and firm enforcement of mobile home construction standards, including the employment of enough field investigators throughout the state that complaints can be quickly investigated and consumers protected.

Approve March 5, 1975.

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HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN A COMPREHENSIVE STUDY OF MONTANA'S FIRE PROTECTION LAWS.

WHEREAS, Montana is faced with a rapidly growing and complex land and structural fire protection problem, and

WHEREAS, the problem consists of a myriad of specific fire situations, including city structural fire protection, scattered rural structural fire protection, grassland and agricultural fires, and fires involving the forests and related structures within and adjacent to the forests, and

WHEREAS, a patchwork of overlapping, complex, and obsolete laws and regulations has emerged, creating confusion to landowners and the various fire protection agencies, and resulting in duplication of services and expenses.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the committee on priorities be requested to assign a comprehensive study of Montana's fire protection laws.

(2) That copies of this resolution be sent to the Departments of Natural Resources and Conservation and Justice.

Approved April 9, 1975.

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE GOVERNOR OF THE STATE OF MONTANA, THE CONGRESS AND THE PRESIDENT OF THE UNITED STATES OF AMERICA TO REQUEST THE FEDERAL ENERGY ADMINISTRATION TO TAKE IMMEDIATE ACTION IN PROPERLY ALLOCATING CRUDE OIL IMPORTED FROM CANADA TO REFINERIES IN THE STATE OF MONTANA.

WHEREAS, it is essential to the well-being not only of Montana but to the entire nation that the state of Montana and in particular the agricultural community be provided with sufficient petroleum fuels so that the state of Montana can continue to produce the foods so necessary to the health and well-being of the entire nation; and

WHEREAS, all industry in the state needs the necessary petroleum products to maintain economic and industrial development; and

WHEREAS, an adequate supply of petroleum fuels for Montana can only be supplied by refineries operating in the state of Montana; and

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WHEREAS, Canadian crude oil imports into the United States are being allocated among United States refineries by the National Energy Board of Canada; and

WHEREAS, the National Energy Board of Canada beginning in January 1975 has allocated insufficient Canadian crude oil supplies to Montana refineries but has made allocations of Canadian crude oil to refineries far to the south and east of Montana so that Canadian crude oil flows through the state of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor of the state of Montana, the Congress and the President of the United States request the Federal Energy Administration to assume the responsibility for and take immediate action in properly allocating crude oil imported from Canada; and

BE IT FURTHER RESOLVED, that in allocating Canadian crude oil Montana's refineries should receive a sufficient volume of Canadian crude oil before areas that have an alternate supply of crude oil receive Canadian crude oil.

BE IT FURTHER RESOLVED, that the Secretary of State is instructed to send copies of this resolution to the Governor, the President of the United States, and to Montana's Congressional delegation.

Approved February 21, 1975.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRESIDENT OF THE UNITED STATES, GERALD FORD, TO REVISE THE EXECUTIVE ORDER OF FEBRUARY 1972 BANNING THE USE OF TOXICANTS FOR PREDATOR CONTROL TO ALLOW THE SUPERVISED USE OF 1080 TO CONTROL PREDATORS.

WHEREAS, the sheep industry of Montana is suffering heavy losses due largely to coyote predation; and

WHEREAS, the cattle industry in Montana also is suffering the loss of calves to coyotes; and

WHEREAS, wildlife in Montana also suffers from increased depredation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President of the United States, Gerald Ford, is urged to revise the executive order of February 1972, that banned the use of toxicants for predator control, in order that toxicant 1080 be allowed for use under a strictly supervised program of predator control.

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BE IT FURTHER RESOLVED, that the President is urged to direct the Environmental Protection Agency to revise its provisions and allow the use of toxicant 1080 to control predators.

BE IT FURTHER RESOLVED, that the President is urged to recognize the importance of a national policy of maximizing food production; that the sheep industry, which is capable of producing choice red meat and a superior fiber from forage without depleting either food grains or petroleum supplies is an important part of that policy which presently requires the aid of the President to protect it from predators.

Approved February 14, 1975.

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS AND THE BOARD OF PUBLIC EDUCATION TO DEVELOP AND ESTABLISH A MANAGEMENT INFORMATION SYSTEM FOR THE POSTSECONDARY INSTITUTIONS.

WHEREAS, management information systems are a precondition for sound fiscal management, and

WHEREAS, the Commission on Postsecondary Education established a data base geared to long-range planning that may be used as a starting base for the development of a sound management information system.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents and the Board of Public Education develop and implement a management information system to be used for long-range planning purposes for the postsecondary institutions in the State of Montana.

Approved March 27, 1975.

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE PROMULGATION OF A RULE BY THE PUBLIC SERVICE COMMISSION GOVERNING THE CIRCUMSTANCES UNDER WHICH A PUBLIC UTILITY MAY REQUIRE A DEPOSIT TO GUARANTEE PAYMENT OF BILLS.

WHEREAS, public utilities in Montana may require persons applying

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for utility service to post a deposit to guarantee payment of bills, and

WHEREAS, this deposit requirement has been imposed in an arbitrary and unjust manner upon persons who have not been shown to be poor credit risks, and

WHEREAS, the Public Service Commission has authority under section 70-115 to make a rule establishing a reasonable classification of customers from whom deposits to guarantee payments may and may not be demanded.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, under authority of section 70-115, R.C.M. 1947, the Public Service Commission is directed to immediately initiate proceedings to adopt a rule providing that a public utility may require from a customer a deposit to guarantee payment only under the following conditions:

(a) When the customer's past record with a similar utility indicates a poor record of payment;

(b) When a new customer cannot secure a cosigner for guarantee of payment; or

(c) When a new customer cannot furnish a letter of good credit from a reliable source, and to publish the adopted rule in Title 38, chapter 14, subchapter 1 of the Montana Administrative Code.

Approved March 19, 1975.

HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS TO FIND A MEANS TO HELP SOLVE SOME OF THE PROBLEMS OF THE NATIVE AMERICANS IN MONTANA THROUGH A MORE RELEVANT EDUCATIONAL PROGRAM; AND TO FULLY IMPLEMENT THE MANDATE OF THE NEW MONTANA CONSTITUTION (ARTICLE X, SECTION 2).

WHEREAS, the highest percentage of the minority population in Montana is comprised of Native Americans; and

WHEREAS, the Montana Commission on Postsecondary Education recognizes that Native American learners are caught in a network of mutually reinforcing handicaps ranging from material poverty to racism, illness, geographical and social isolation, language and cultural barriers, and simple hunger; and

WHEREAS, the formal schooling for Native Americans must be more relevant to their values, customs, and historical perspectives.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That the Board of Regents establish programs for Native American studies that are based on Indian students' needs, population, and the number of Montana Indian communities to be served.

(2) That the Board of Regents establish criteria for future state funding and for establishing programs of ethnic culture that are based on effective administration, research activities, curriculum developments and support services.

(3) That the Board of Regents support the new Indian Culture Master Plan for the Education of Public School Teachers (HB 343, HJR 60 of 1974) and provide assistance for its implementation.

(4) That the Board of Regents appoint a standing subcommittee composed of Indian educators, tribal representatives and concerned people to review financing and administration of institutional programs for Native Americans and to deal with issues affecting the concerns of Montana Indian communities.

(5) That the Board of Regents provide special services for Indian students who need such services as skill classes, cultural classes, Indian counselors, tutors, etc. Provision should be made for Indian students to have access to qualified Indian counselors (for at least four (4) years) as well as tutors (for at least two (2) years) to assist them in adapting to the foreign environment of the institution.

(6) That the Board of Regents should develop an annual report concerning Native Americans in postsecondary education to be disseminated statewide.

(7) That the Board of Regents should seek funds from the Legislature for a permanent Indian staff member in the office of the Commissioner of Higher Education for the purpose of coordinating Indian affairs and programs at postsecondary institutions.

(8) That the Board of Regents should ensure that all units of higher education make an immediate effort to employ qualified Indian faculty and noninstructional staff on all levels.

(9) That the Board of Regents begin implementation of all the recommendations of this resolution during the 1976 fiscal year.

Approved April 5, 1975.

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA IN SUPPORT OF AND ENDORSING THE PROPOSED LEGISLATIVE CHANGES CONTAINED IN UNITED STATES SENATE BILL NO. 3910.

WHEREAS, the economic prosperity and welfare of the United States agricultural community requires a viable transportation system, and

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WHEREAS, an agricultural product national transportation policy governing railroad pricing policy will be in the public interest, and

WHEREAS, legislative changes in the Interstate Commerce Act have been introduced into Congress, intended to implement and maintain equality for shippers of agricultural commodities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this joint august body hereby endorses and supports the provisions of United States Senate Bill No. 3910 entitled "The Agricultural and Rural Commodities Transportation Act of 1974".

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the United States Senate and House of Representatives.

Approved March 20, 1975.

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CIVIL AERONAUTICS BOARD OF THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH REGULATIONS WHICH WOULD PROVIDE FOR CONTINUED AIR SERVICE DURING PERIODS WHEN AN AIRLINE PROVIDING SOLE SERVICE IS SHUT DOWN; AND REQUESTING THE MONTANA CONGRESSIONAL DELEGATION TO INTRODUCE LEGISLATION WHICH WOULD ABOLISH MUTUAL AID PACTS AMONG AIRLINES.

WHEREAS, the availability of commercial air transport plays an important role in Montana's economic well-being, and

WHEREAS, many Montana cities do not have competitive air service on major routes, and

WHEREAS, any prolonged shutdown of service results in great economic dislocation to the people who rely on the airline for transportation, and

WHEREAS, a prolonged shutdown of service results in severe economic hardship to the airports which are dependent on landing fees for much of their financing, and

WHEREAS, the citizens of Montana have within the past three (3) years experienced the unhappy effects of a prolonged shutdown, and

WHEREAS, proper planning now can prevent a recurrence of past problems.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Chairman of the Civil Aeronautics Board of the Department of Transportation be requested to establish regulations which will provide air service during periods of shutdown.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be urged to introduce legislation which would have as its purpose the abolishment of mutual aid pacts which tend to discourage quick settlement of labor disputes.

BE IT FURTHER RESOLVED, that the Secretary of State be directed to send copies of this resolution to the Secretary of Transportation, the Chairman of the Civil Aeronautics Board, and the members of the Montana Congressional Delegation.

Approved March 13, 1975.

HOUSE JOINT RESOLUTION NO. 37

A joint resolution of the senate and the house of representatives of the state of Montana submitting a wage and salary plan to the legislature for approval in accordance with section 6, chapter 440, laws of Montana 1973.

WHEREAS, Chapter 440, Laws of Montana 1973, directs the Department of Administration to develop a personnel classification plan for all state positions and classes of positions in state service; and

WHEREAS, Section 6, Chapter 440, Laws of Montana 1973, requires the Department of Administration to develop a wage and salary plan, for integration with the personnel classification plan, to be submitted to the Forty-fourth Legislature for approval; and

WHEREAS, the Department of Administration has developed a personnel classification plan and a wage and salary plan.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Wage and Salary Plan submitted to the legislature by the Department of Administration is hereby approved for integration with the personnel classification plan:

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THE AMOUNTS SHOWN ARE ANNUAL SALARIES IN DOLLARS

GRADE	STEP 1	STEP 1½	STEP 2	STEP 2½	STEP 3	STEP 3½	STEP 4	STEP 4½	STEP 5	STEP 5½	STEP 6	STEP 6½	STEP 7
1	$ —	$ —	$4,164	$4,242	$4,320	$4,422	$4,524	$4,632	$4,740	$4,812	$4,884	$4,956	$5,028
2	4,320	4,422	4,524	4,632	4,740	4,854	4,968	5,082	5,196	5,274	5,352	5,430	5,508
3	4,740	4,854	4,968	5,082	5,196	5,322	5,448	5,574	5,700	5,784	5,868	5,958	6,048
4	5,196	5,322	5,448	5,574	5,700	5,832	5,964	6,108	6,252	6,348	6,444	6,540	6,636
5	5,700	5,832	5,964	6,108	6,252	6,402	6,552	6,708	6,864	6,966	7,068	7,176	7,284
6	6,252	6,402	6,552	6,708	6,864	7,026	7,188	7,356	7,524	7,638	7,752	7,866	7,980
7	6,864	7,026	7,188	7,356	7,524	7,704	7,884	8,070	8,256	8,382	8,508	8,634	8,760
8	7,524	7,704	7,884	8,070	8,256	8,454	8,652	8,856	9,060	9,198	9,336	9,474	9,612
9	8,256	8,454	8,652	8,856	9,060	9,276	9,492	9,714	9,936	10,086	10,236	10,392	10,548
10	9,060	9,276	9,492	9,714	9,936	10,170	10,404	10,656	10,908	11,070	11,232	11,400	11,568
11	9,936	10,170	10,404	10,656	10,908	11,166	11,424	11,694	11,964	12,144	12,324	12,510	12,696
12	10,908	11,166	11,424	11,694	11,964	12,246	12,528	12,822	13,116	13,314	13,512	13,716	13,920
13	11,964	12,246	12,528	12,822	13,116	13,428	13,740	14,064	14,388	14,604	14,820	15,042	15,264
14	13,116	13,416	13,716	14,016	14,316	14,616	14,916	15,216	15,516	15,816	16,116	16,266	16,416
15	14,388	14,688	14,988	15,288	15,588	15,888	16,188	16,488	16,788	17,088	17,388	17,538	17,688
16	15,792	16,092	16,392	16,692	16,992	17,292	17,592	17,892	18,192	18,492	18,792	18,942	19,092
17	17,316	17,616	17,916	18,216	18,516	18,816	19,116	19,416	19,716	20,016	20,316	20,466	20,616
18	18,996	19,296	19,596	19,896	20,196	20,496	20,796	21,096	21,396	21,696	21,996	22,146	22,296
19	20,844	21,144	21,444	21,744	22,044	22,344	22,644	22,944	23,244	23,544	23,844	23,994	24,144
20	22,860	23,160	23,460	23,760	24,060	24,360	24,660	24,960	25,260	25,560	25,860	26,010	26,160
21	25,080	25,380	25,680	25,980	26,280	26,580	26,880	27,180	27,480	27,780	28,080	28,230	28,380
22	27,516	27,816	28,116	28,416	28,716	29,016	29,316	29,616	29,916	30,216	30,516	30,666	30,816
23	30,180	30,480	30,780	31,080	31,380	31,680	31,980	32,280	32,580	32,880	33,180	33,330	33,480
24	33,108	33,408	33,708	34,008	34,308	34,608	34,908	35,208	35,508	35,808	36,108	36,258	36,408
25	36,324	36,624	36,924	37,224	37,524	37,824	38,124	38,424	38,724	39,024	39,324	39,474	39,624

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Except as specifically provided herein, the salary of each employee of record on January 1, 1975 shall, retroactive to the first day of the first pay period in January, 1975 as determined by the budget director, be the salary shown under the column, "Step 1" for the grade which corresponds to the classification made previously by the department of administration as provided in section 59-905, R.C.M. 1947. Each employee's salary which exceeds the amount shown in the column, "Step 1" for the appropriate grade as previously determined by the department of administration and does not equal an amount in the appropriate grade shall be increased to the next highest salary shown in the above table for the appropriate grade effective the first day of the first pay period in January, 1975 as determined by the budget director. All employees hired after passage of this resolution shall be started at "Step 1" of the appropriate grade.

Effective the first day of the first pay period in July, 1975, as determined by the budget director, each salary on the above table shall be increased by 5.012 percent.

Effective the first day of the first pay period in July, 1976, as determined by the budget director, each salary on the table as adjusted in 1975 shall be increased 4.057 percent.

Effective the first day of the first pay period in July, 1975, as determined by the budget director, the salary of each employee of record on July 1, 1975 whose salary is at step 6 ½ or below on the above table shall increase to the next highest amount shown on the above table for the appropriate grade upon certification by the agency director that the employee merits such an increase.

Effective the first day of the first pay period in July, 1976, as determined by the budget director, the salary of each employee of record on July 1, 1975 whose salary on July 1, 1976 would otherwise be at step 6 ½ or below on the above table shall increase to the next highest amount on the above table for the appropriate grade upon certification by the agency director that the employee merits such an increase.

The salary of an employee of record after July 1, 1975 shall increase to the next highest amount shown on the above table on the first day of the first pay period after the anniversary date of the commencement of the employee's employment upon the same certification as provided above.

In addition to the salary as determined above, each classified employee who has completed at least five (5) years of uninterrupted state service shall receive the amount obtained by multiplying the larger of ten dollars ($10) per month or ten percent (10%) of the difference between the base salary for his grade and step and the base salary for the corresponding step in the next highest grade by the number of completed contiguous five (5) year periods of uninterrupted service he has with the state. Service to the state shall not be considered to be interrupted by military service or leaves of absence not exceeding three months.

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This wage and salary plan is in lieu of any other plan or system of pay increases for classified state employees.

Approved April 5, 1975.

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE ADOPTION OF A NEW RULE IN THE MONTANA ADMINISTRATIVE CODE ESTABLISHING AN ENDANGERED SPECIES LIST.

WHEREAS, section 26-1805, R.C.M. 1947, directs the Fish and Game Commission to recommend to the Legislature a list of endangered wildlife in the State of Montana, and

WHEREAS, the Fish and Game Commission has transmitted their recommendations to the Legislature by letter to the Legislative Council.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That within ninety (90) days, the Montana Fish and Game Commission is directed to initiate proceedings to promulgate a rule listing the following animals as endangered species of wildlife indigenous to the State of Montana:

American Peregrine Falcon (Falco peregrinus anatum)
Whooping Crane (Grus americana)
Northern Rocky Mountain Wolf (Canis lupus irremotus)
Black-footed Ferret (Mustela nigripes)

BE IT FURTHER RESOLVED, that the Secretary of State is directed to send a copy of this resolution to the Fish and Game Commission.

Approved April 4, 1975.

HOUSE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE LAWS RELATING TO RESIDENCE AND DOMICILE.

WHEREAS, a computer search of the Revised Codes of Montana has revealed over two thousand eight hundred (2,800) references to residence, domicile, and like terms; and

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WHEREAS, "residence", "domicile", and like terms are defined or otherwise treated in at least one thousand two hundred (1,200) separate sections of the codes; and

WHEREAS, the Montana laws defining and relating to "residence" and "domicile" are conflicting, confusing, repetitious and highly unmanageable; and

WHEREAS, under present Montana law the status of a person's domicile or residence may depend on such person's intention, location, vocation, sex, student status, marital status, age, and other variables; and

WHEREAS, there are varying requirements for establishing a residence or domicile in Montana depending upon the circumstances relating to such residence or domicile, such as voting, attending a university, driving a motor vehicle, licensing a motor vehicle, getting married, filing for divorce, seeking child custody, hunting and fishing, seeking welfare, registering to vote, filing for public office, paying taxes, release from institutions, determining venue, filing documents, and the like; and

WHEREAS, the terms "residence" and "domicile" are used interchangeably throughout the codes, but are defined differently and often conflict with other state and federal definitions, thus aggravating the confusion; and

WHEREAS, federal and supreme court decisions have recognized a constitutional right to freely travel and live anywhere within the United States, and have rendered questionable the constitutionality of many of Montana's laws using the terms "residence" and "domicile".

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Legislative Priorities is requested to appoint the appropriate standing committee to examine the laws relating to residence and domicile and to present recommendations and proposed legislation to the 45th Legislature.

Approved March 24, 1975.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR THE GOVERNOR'S DECISION TO CREATE A TASK FORCE ON TRIBAL, STATE, AND FEDERAL RESPONSIBILITIES AND URGING THE FEDERAL GOVERNMENT TO RECOGNIZE ITS RESPONSIBILITY TO RESOLVE THE JURISDICTIONAL CONFLICTS THAT EXIST ON THE SEVEN INDIAN RESERVATIONS IN MONTANA.

WHEREAS, there has been substantial public controversy concerning

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the rights and obligations of Indians and non-Indians residing on the various Indian reservations in Montana, and

WHEREAS, the friendly relations between Indians and non-Indians that have existed in Montana are now being threatened by the uncertainty that exists over the rights and obligations that have been conferred upon the Indian and non-Indian residents of this state, and

WHEREAS, the jurisdictional problems that exist have been created by the federal government through treaties and the passage of federal legislation, and

WHEREAS, the state of Montana recognizes the sovereign rights of tribal governments and has no legal authority to interfere with the exercise of those sovereign rights, and

WHEREAS, the Legislature of the state of Montana desires to provide quality services to the Indian and non-Indian citizens who reside on or near the various Indian reservations, and

WHEREAS, Governor Thomas L. Judge will seek funding for a task force on tribal, state, and federal responsibilities to analyze and recommend solutions to the jurisdictional problems that exist in the reservation areas of this state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the state of Montana supports the Governor's decision to create a task force on tribal, state and federal responsibilities which will provide a forum for tribal, state and federal officials to discuss the common problems of jurisdiction.

BE IT FURTHER RESOLVED, that the Legislature of the state of Montana urges the Montana Congressional Delegation and the President of the United States to recognize that the federal government has the primary responsibility to resolve the jurisdictional conflicts that exist on the Indian reservations in Montana.

BE IT FURTHER RESOLVED, that one Justice of the Montana Supreme Court should be added to the task force established by the Governor and the Governor is urged to consider this request.

BE IT FURTHER RESOLVED, that the major questions of responsibility that must be resolved by the federal government include questions concerning land and water use, and the provision of services for health care, mental care, alcohol and drug abuse, welfare, law enforcement, corrections, and education.

BE IT FURTHER RESOLVED, that the federal government must assume a greater financial responsibility to provide primary services in the reservation areas of Montana and reduce the expanded financial burden that has been placed upon state and local government.

BE IT FURTHER RESOLVED, that the Legislature of the state of Montana urges Montana's Congressional Delegation to participate in and support the activities of the task force concerning the responsibilities of tribal, state, and federal government.

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BE IT FURTHER RESOLVED, that the Secretary of State of Montana send copies of this resolution to the Montana Congressional Delegation, the President of the United States, and the Secretary of the Interior.

Approved April 4, 1975.

HOUSE JOINT RESOLUTION NO. 47

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE SUPREME COURT TO RESCIND ITS RULE REQUIRING ASPIRANTS TO THE MONTANA BAR TO HOLD A DEGREE FROM AN ACCREDITED COLLEGE OF LAW.

WHEREAS, there are presently many members of the Montana bar who discharge their duties in a competent and professional manner who do not hold degrees from accredited law schools, and

WHEREAS, there is but one accredited law school in the entire state of Montana, and

WHEREAS, there are many otherwise capable and qualified citizens of the state of Montana desirous of becoming members of the bar who because of financial, family, or other reasons find it difficult or impossible to attend law school, and

WHEREAS, the Supreme Court of Montana which under Article VII, section 2 of the Montana constitution has the power to make rules governing admission to the bar and has pursuant to this power adopted a rule requiring that each new member of the bar be a graduate of an accredited law school, and

WHEREAS, many citizens of Montana in reliance upon the former practice of entry into the bar upon passage of the bar examination suffered loss in terms of both time and money spent preparing for the bar examination by the adoption of Rule VI.A.1., and

WHEREAS, the administration of a comprehensive and well-planned bar examination is the only fair and equitable method of maintaining a competent and professional bar.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Supreme Court of the state of Montana is urged to rescind Rule VI.A.1., which rule requires a law degree from an accredited law school before entry into the bar, and

BE IT FURTHER RESOLVED, that the Montana Supreme Court is urged to adopt the rule establishing qualifications for applicants to the Montana bar which existed prior to December 31, 1969, and

BE IT FURTHER RESOLVED, that copies of this resolution be for-

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warded by the Secretary of State of Montana to each Justice of the Montana Supreme Court.

Approved March 28, 1975.

HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CONDUCT A STUDY FOR THE DEVELOPMENT OF A STATEWIDE SOILS INVENTORY.

WHEREAS, soil, a basic physical resource, is critically important to the economy and environment of Montana for its value in crop, livestock, timber and wildlife production and also is important for its value as a site and source of materials for urban, industrial, and recreational related developments, and

WHEREAS, the national energy crisis has focused attention on the vast coal resources of eastern Montana, and the international need for more food and fiber production has emphasized the unique relationships between soil properties and continued high level of production, and

WHEREAS, soil survey data is a vital ingredient to insure proper and sound land use plans, and soil surveys can provide timely information that will assist in the proper reclamation of lands used for the extraction of nonrenewable resources, and

WHEREAS, soils survey information is needed to identify and reclaim saline-seep affected areas, and identify flood-prone areas, wetlands, critical erosion areas, sources of high sediment production, and those lands that are well suited for agricultural uses, and

WHEREAS, many of the problems of maintaining environmental quality and productive capacity are difficult to resolve effectively in the absence of adequate resource data, and

WHEREAS, the USDA Soil Conservation Service, with leadership for the National Cooperative Soil Survey in Montana, has, in cooperation with the Montana Agricultural Experiment Stations and other federal agencies completed detailed soil surveys on thirty-four million (34,000,000) acres, and

WHEREAS, with the current financial and technical resources, it will take about fifteen (15) years to complete the soil survey in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Natural Resources and Conservation in cooperation with conservation districts, private land owners, local, state and federal agencies, is hereby requested to conduct a preliminary study to

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analyze and determine the need for a state program to support the efforts of those agencies now participating in the National Cooperative Soil Survey to accelerate the production of detailed soil surveys in Montana and its incorporation into a data bank. Recommendations shall be submitted to the Forty-fifth Legislature when it convenes.

BE IT FURTHER RESOLVED, that the Montana Secretary of State send copies of this joint resolution to affected agencies of the United States Department of Agriculture, United States Forest Service, Soil Conservation Service, Agricultural Research Service, Cooperative Extension Service; the United States Department of the Interior, Bureau of Land Management, Bureau of Reclamation, Bureau of Sports Fisheries and Wildlife, Bureau of Indian Affairs, Bureau of Outdoor Recreation; to the Montana Department of Fish and Game, Department of State Lands, the Montana Agricultural Experiment Station, and to the Montana Congressional Delegation.

Approved April 4, 1975.

HOUSE JOINT RESOLUTION NO. 49

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA HIGHWAY DEPARTMENT TO DESIGNATE AREAS OF U.S. HIGHWAY 2 THAT QUALIFY AS "PRIORITY PRIMARY" HIGHWAY AS OUTLINED IN THE 1973 FEDERAL HIGHWAY ACT.

WHEREAS, highways are one of the most important factors in a community's economic and urban viability in Montana; and

WHEREAS, counties along U.S. Highway 2 are major contributors to the agricultural wealth of Montana; and

WHEREAS, the marketing of these products is dependent on rail service because of poor highway conditions; and

WHEREAS, "Priority Primary" designation could help increase tourism along U.S. Highway 2; and

WHEREAS, in a time of national emergency U.S. Highway 2 could become a bottleneck with the tremendous amount of military installations along the route.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Highway Department is requested to designate eligible sections of U.S. Highway 2 as "Priority Primary" as outlined in the 1973 Federal Highway Act.

Approved March 5, 1975.

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HOUSE JOINT RESOLUTION NO. 53

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY TO STUDY THE AIR POLLUTION IMPACT OF UTILIZING FORT UNION BASIN COAL AND LIGNITE.

WHEREAS, there exists relatively extensive data on the chemical characteristics of eastern coal and on the air pollution impacts of utilizing eastern coal, and

WHEREAS, comparatively little information is available concerning the air pollution impact and trace element emissions of utilizing Fort Union coal and lignite in thermal, gasification, and liquefaction coal conversion processes, and

WHEREAS, the utilization of Fort Union coal and lignite is increasing nationally, and

WHEREAS, the Legislature of Montana recognizes the need for enhancing the nation's understanding of the air pollution impact of utilizing Fort Union coal and lignite.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Environmental Protection Agency be encouraged to study the chemical characteristics of Fort Union coal and lignite, the potential air quality impact of utilizing Fort Union coal and lignite, and the potential emissions of trace elements and heavy metals.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Montana Congressional Delegation and to the U.S. Environmental Protection Agency Administrator.

Approved March 27, 1975.

HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE MONTANA STATE BUREAU OF MINES TO UNDERTAKE STUDIES OF THE GROUNDWATER RESOURCES OF MONTANA.

WHEREAS, there has been no comprehensive study of the groundwater of the state of Montana as a whole, and

WHEREAS, groundwater studies in the coal-bearing region of eastern Montana are vital for informed decision making in that region, and

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WHEREAS, the Fort Union coal formation is an aquifer for the groundwater of the Yellowstone River basin.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana State Bureau of Mines immediately proceed to study the groundwater of the state of Montana as an element of the state water plan, beginning with a study of the groundwater in, above, and around the coal-bearing Fort Union formation, the effects of strip mining on groundwater movement and supply, and changes in soil chemistry resulting from aquifer disturbance.

BE IT FURTHER RESOLVED, that the groundwater study also include an assessment of the effects of seismic exploration.

BE IT FURTHER RESOLVED, that the study also consider the effects and other causes of oil well water flood depletion of the Fox Hill Sands aquifer.

BE IT FURTHER RESOLVED, that the Montana State Bureau of Mines coordinate activities with the Department of State Lands and the Department of Natural Resources and Conservation.

BE IT FURTHER RESOLVED, that final and interim reports be made available to the public and to the legislature.

Approved March 26, 1975.

HOUSE JOINT RESOLUTION NO. 55

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR TO CONTINUE THE MENTAL HEALTH ADVISORY COUNCIL.

WHEREAS, the Forty-third Legislature requested the Governor to appoint a blue ribbon committee to study the future direction, scope, and financial requirements in the field of mental health and report its findings, conclusions, and recommendations to the 1975 Legislature; and

WHEREAS, the Governor, pursuant to that request, appointed the Mental Health Advisory Council for this purpose and that council is presently conducting an ongoing comprehensive review and evaluation of state services, programs, and facilities for the mentally ill and developmentally disabled; and

WHEREAS, although the Mental Health Advisory Council has submitted recommendations to the Forty-fourth Legislature concerning proposals in the field of mental health presently before the Legislature, time has not allowed for long-range planning or for the development of recommendations for long-range goals by the council; and

WHEREAS, the Legislature recognizes the need for long-range planning and the development of long-range goals for the provision of services to the mentally handicapped by the State of Montana.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor is requested to continue the existence of the Mental Health Advisory Council through the next biennium to enable it to thoroughly study the future directions, scope, problems, and needs in the provision of services by the State of Montana to our mentally ill and developmentally disabled citizens, and report its findings, conclusions, and recommendations to the Forty-fifth Legislature.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Governor.

Approved March 22, 1975.

HOUSE JOINT RESOLUTION NO. 57

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DESIGNATING THE FOURTH FRIDAY IN SEPTEMBER OF EVERY YEAR AS "NATIVE AMERICAN INDIAN DAY" IN THE STATE OF MONTANA AND INVITING THE PEOPLE OF THE STATE OF MONTANA TO OBSERVE THAT DAY WITH APPROPRIATE CEREMONIES AND ACTIVITIES.

WHEREAS, Article X, section 2, of the Constitution of Montana recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity; and

WHEREAS, the knowledge of this important history and culture is gradually being lost to citizens of the state of Montana to the detriment of native Americans and all citizens of the state of Montana; and

WHEREAS, the history and culture of native American Indians is an integral part of the folklore and history of the nation and the state of Montana; and

WHEREAS, the legislature recognizes that all Montanans have an invaluable opportunity for cultural enrichment through contact with the folkways and philosophy of native Americans; and

WHEREAS, we live in a time of increasing awareness of the importance of our natural environment, it is important that we not lose the native Americans' respect for, and ability to live in harmony with, the forces of nature; and

WHEREAS, there is a general lack of understanding of the unique psychological background of native American Indians which can be understood only by sharing the views and beliefs of native American Indians; and

WHEREAS, the state of Montana contains the fourth largest Indian population of the several states of the United States.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Governor of Montana be encouraged to designate each year the fourth Friday in September as "Native American Indian Day";

(2) That the people of Montana be encouraged to participate in appropriate ceremonies and activities;

(3) That the Secretary of State send copies of this resolution to the Governor, to each County Clerk of the state of Montana for posting in a public place, and to each newspaper published in the state, for publication therein.

Approved March 25, 1975.

HOUSE JOINT RESOLUTION NO. 58

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AND THE GOVERNOR OF MONTANA TO UPHOLD TO THE FULLEST EXTENT THE EXISTING STATE AND FEDERAL AIR POLLUTION CONTROL LAWS AND REGULATIONS.

WHEREAS, the Environmental Protection Agency has established a national procedural framework to enable state action in the determination of air quality; and

WHEREAS, the Montana Legislature recognizes the desire that any development and growth in Montana be controlled and clean; and

WHEREAS, the Legislature recognizes the effect of air quality standards and regulations on land use planning and social and economic development; and

WHEREAS, the Legislature recognizes the relatively pristine character of "Big Sky" air to be one of the state's most valued resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature's concern that there be no further weakening of the Federal Clean Air Act be communicated to the Environmental Protection Agency and the United States Congress.

BE IT FURTHER RESOLVED, that the Governor of Montana be encouraged to submit to the administrator of the Environmental Protection Agency a proposal to redesignate all national park, wilderness, primitive, and state park areas within Montana as Class 1 Air Quality Areas; and to allow no redesignation of any area within Montana to a Class III area under the EPA regulations effective January 6, 1975, Title 40, Chapter 1, C.F.R., Section 52.21.

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BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the State Board of Health, the Governor of Montana, the U.S. Environmental Protection Agency Administrator, and the Congress of the United States.

Approved March 27, 1975.

HOUSE JOINT RESOLUTION NO. 61

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE UNITED STATES CONGRESS GRANT TO THE CITY OF DEER LODGE, MONTANA, THE LAND AND BUILDINGS CONSTITUTING THE OLD TERRITORIAL PRISON LOCATED THEREIN.

WHEREAS, the city of Deer Lodge and the state of Montana desire to preserve the territorial prison located at Deer Lodge for its cultural, historical, educational, and recreational value, and

WHEREAS, the governing body of the city of Deer Lodge, Montana, would restore and preserve the territorial prison for the historical, cultural, and recreational benefits of all Americans, and

WHEREAS, the territorial prison in Deer Lodge, Montana, was granted to the state of Montana by the federal government in the Enabling Act, and

WHEREAS, under the terms of the Enabling Act, the state of Montana may not grant the territorial prison to the city of Deer Lodge except for its fair market value, and

WHEREAS, the fair market value of the territorial prison is difficult to determine and probably too costly for the city of Deer Lodge, Montana, to purchase.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is requested to do whatever is necessary to grant to the governing body of the city of Deer Lodge, Montana, the land and buildings of the old territorial prison, which constitute blocks 52, 53, 62, 63, 66, and 67 of the Original Townsite to the city of Deer Lodge, according to the official map of the city of Deer Lodge, approved and accepted by the City Council on the 26th day of February, 1912, and

BE IT FURTHER RESOLVED, that such grant by the United States Congress to the city of Deer Lodge, Montana, be made effective upon the evacuation of the territorial prison by the Montana Department of Institutions, and

BE IT FURTHER RESOLVED, that Congress be informed that the city

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of Deer Lodge, Montana, will not use the territorial prison for any commerical enterprise, and

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation.

Approved March 22, 1975.

HOUSE JOINT RESOLUTION NO. 62

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE FEDERAL GOVERNMENT'S ENERGY POLICY MAKERS TO CONSIDER THE NEEDS OF THE AMERICAN PEOPLE AS WELL AS THE NEEDS OF ENERGY SUPPLYING CORPORATIONS.

WHEREAS, corporations dealing in petroleum and other fossil fuels have been known to contribute large amounts of money to various state and national political campaigns, and

WHEREAS, various national administrations have been known to appoint numerous fossil fuel industry executives to decision-making positions, especially regarding national energy policy; and

WHEREAS, these appointees have considerable influence in shaping the energy policies of the United States; and

WHEREAS, the energy policy of the United States has been more rapid development of fossil fuels, at the expense of several "national sacrifice areas"; and

WHEREAS, the energy policy of the United States has not provided adequately for the consideration of energy conservation and/or alternative energy sources; and

WHEREAS, the energy policy of the United States has provided little restraint to the profiteering by fossil fuel corporations at the expense of the American economy and the American consumer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the government of the United States of America is respectfully requested to consider the interests of all the American people, not just the fossil fuel corporations, in formulating national energy policy.

BE IT FURTHER RESOLVED, that copies of this resolution be mailed to every member of the United States Congress, the director of the Energy Research and Development Administration, the Secretary of the Interior, and the President of the United States.

Approved March 25, 1975.

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HOUSE JOINT RESOLUTION NO. 63

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BONNEVILLE POWER ADMINISTRATION TO PREPARE AN IMPACT STUDY OF THE PACIFIC NORTHWEST HYDRO-THERMAL PLANNING PROGRAM.

WHEREAS, the energy resources of eastern Montana are being called upon to assist in meeting the requirements of the Pacific Northwest states, and

WHEREAS, the Pacific Northwest energy supply region, including much of Montana, is interconnected under the leadership of the Bonneville Power Administration, and

WHEREAS, the Bonneville Power Administration was established under an Act of Congress which, as amended, declares among its purposes to encourage the widest possible use of electric energy generated by federal hydroelectric projects, to prevent the monopolization of such energy by limited groups, and to give preference in the distribution of such energy to public bodies and cooperatives, and

WHEREAS, the Bonneville Power Administration, in cooperation with publicly-owned and investor-owned utilities in the Pacific Northwest, is responsible for planning for future energy needs, and has carried out such planning through the medium of a Hydro-Thermal Power Program to meet projected needs through the year 1995, and

WHEREAS, the projection of energy needs by the Bonneville Power Administration is based upon a continuation of historical trends in demand growth, which trends have indicated an exponential growth pattern, and

WHEREAS, recent implementation of energy conservation policies and the promise of alternative sources of energy supply have indicated that a continuation of exponential growth of demand for energy generated from conventional sources is by no means inevitable, and

WHEREAS, within the past years, the largest single rate of growth in the various categories of sales of firm power produced by the Bonneville Power Administration has been that of direct sales to light metals industries, which fact has been construed in some quarters to imply a policy within said Administration to justify its demand projections through promotional marketing to limited groups at the expense of public bodies and cooperatives, and

WHEREAS, in order to fully air and resolve the controversies surrounding the marketing policies and demand projections of the Bonneville Power Administration, the Governors of Oregon and Washington have urged said Administration to examine alternative energy policies and strategies through the medium of an environmental impact statement

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upon the overall program for meeting Pacific Northwest energy needs during the next twenty years, and

WHEREAS, such an environmental impact statement would require nothing more of the Bonneville Power Administration than the Utility Siting Act of 1973 requires of state agencies and public utilities operating in Montana, and

WHEREAS, preparation of such a statement for the Pacific Northwest region would benefit the administration of the Montana Utility Siting Act by allowing state determinations of energy needs to be made in a clear context of regional strategies for dealing with energy problems, and

WHEREAS, preparation of such a statement under the procedures of the National Environmental Policy Act of 1969 would allow the participation by concerned citizens, business firms, and local and state governments similar to the participation allowed in energy planning in Montana under the Utility Siting Act, and

WHEREAS, the Forty-fourth Montana Legislature concurs with the recommendations of the Governors of Oregon and Washington.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Bonneville Power Administration is requested to assume lead agency responsibility for the preparation of a broad, programmatic environmental impact statement to analyze the underlying assumptions of detailed electrical energy plans and projects for the Pacific Northwest and the interaction and aggregative effect of separate projects and actions, examining at least three alternative assumptions as to future energy demands such as the three alternative forecasts set forth in the Ford Foundation Energy Policy Study.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Secretary of the Interior, the Chairman of the Federal Council on Environmental Quality, the Administrator of the Bonneville Power Administration, the Governors and Congressional delegations of Montana, Washington, Oregon, California, Idaho, and Wyoming.

Approved March 20, 1975.

HOUSE JOINT RESOLUTION NO. 65

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DECLARING THE MONTANA STATE LEGISLATURE'S UNALTERABLE OPPOSITION TO REGISTRATION AND CONFISCATION OF FIREARMS.

WHEREAS, the right of an individual to keep and bear arms is funda-

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mental to the preservation of freedom and is guaranteed by the Constitution of the United States, and

WHEREAS, firearms are, always have been, and always will be very much a part of the way of life in the great state of Montana, and

WHEREAS, the private ownership of firearms, including handguns, is the last line of defense against the criminal element, and

WHEREAS, the report of the National Advisory Commission on Criminal Justice Standards and Goals, issued in August, 1973, advocates, among other things, the confiscation of all privately owned handguns, and

WHEREAS, the people of Montana having seen that federal firearm registration is leading us closer to federal confiscation of firearms.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the state of Montana go on record as being unalterably opposed to registration and confiscation of firearms in general.

BE IT FURTHER RESOLVED, that a copy of this Joint Resolution be sent to the President of the United States, to the Vice-President of the United States, and to Montana's Senators and Representatives in Congress.

Approved April 5, 1975.

HOUSE JOINT RESOLUTION NO. 67

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEPARTMENT OF HIGHWAYS TO HELP DECREASE UNEMPLOYMENT BY OFFERING A SUFFICIENT NUMBER OF HIGHWAY PROJECTS FOR BIDDING AND CONSTRUCTION IN THIS CONSTRUCTION SEASON.

WHEREAS, recent Presidential action has released previously impounded funds marked for construction of highway projects across the nation; and

WHEREAS, awards of those formerly impounded funds will be made on a priority basis to states whose highway construction projects are in an advance state of design; and

WHEREAS, the Montana Department of Highways has announced plans to offer for bid more than sixty million dollars ($60,000,000) in projects before June; and

WHEREAS, those projects once begun will employ thousands of Montana construction workers who are presently unemployed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Montana House of Representatives urges the Department of Highways to follow through on its announced plan and rapidly prepare highway projects for construction in the early part of this year's construction season as a means of reducing the state's unemployment problem.

Approved April 16, 1975.

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING THE NURSING HOMES AND HOSPITALS WHICH ACCEPTED RESIDENTS OF BOULDER RIVER SCHOOL AND HOSPITAL DURING THE 1974 EVACUATION.

WHEREAS, Boulder River School and Hospital has faced critical staff shortages and physical plant deficiencies in all parts of the institution, and

WHEREAS, the shortages and deficiencies reached such an acute level in July of 1974 that proper safe care and treatment of the residents were no longer possible, and

WHEREAS, one hundred and three (103) residents were evacuated and immediately placed in twenty-six (26) nursing homes and hospital facilities throughout the state, and

WHEREAS, a consultation team from Boulder River School and Hospital has visited twelve (12) of these facilities and found that the residents are receiving better daily care, and in some cases, better treatment in terms of activities and therapy than they were receiving at Boulder River School and Hospital, and

WHEREAS, many of these facilities have made use of previously untapped community resources — programs and professional persons — in order to serve the needs of the residents.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature recognizes the invaluable contribution made by the facilities which opened their doors to the residents of Boulder River School and Hospital at a time of crucial need, and extends its thanks to the proprietors, administrators, and staff involved in providing this care and service, and

BE IT FURTHER RESOLVED, that the secretary of state send copies of this resolution to the twenty-six (26) facilities concerned from a list to be provided by Boulder River School and Hospital.

Approved January 28, 1975.

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SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REPEALING RULE 2-3.34(10)-S3450 OF THE MONTANA ADMINISTRATIVE CODE, CONCERNING LIMITATION OF POLITICAL ACTIVITIES, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Department of Administration has no statutory authority to ban political activity on the part of public employees, and

WHEREAS, banning public employees from all political campaign activities deprives them of a political right guaranteed by Article II, sections 4 and 7 of the constitution of Montana, and

WHEREAS, banning public employees from participation in political campaigns is not essential to protect those employees from undue influence of their superiors or to protect the electoral process from the abuse of the official authority of an employer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That pursuant to section 82-4203(3), rule 2-3.34(10)-S3450 of the Montana Administrative Code is repealed. This resolution is effective on July 1, 1975.

Approved March 22, 1975.

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN ITS PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules are adopted:

CHAPTER 1
Presiding Officer-Decorum, Order and Debate

1-1. The presiding officer of the senate is the president and the presiding officer of the house of representatives is the speaker. The presiding

officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the chief clerk or secretary.

1-7. Questions of privilege are: First, those affecting the collective rights, safety, dignity, and integrity of the proceedings of either house; and second, those affecting the rights, reputation and conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides. The business manager and the presiding officer will co-sign all payrolls.

1-9. (1) A communication or paper shall be addressed to the presiding officer, and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills, or to communications from the governor or the other house.

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(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is a member of the house over which he is presiding he shall vote as any other member, and may not vote a second time.

CHAPTER 2
Meetings, Quorums and Attendance

2-1. The hour of meeting of the senate is 1:30 p.m. unless otherwise ordered by the senate. The hour of meeting of the house of representatives is 1:30 p.m. unless otherwise ordered by the house.

2-2. Lobbying on the floor of the senate or house of representatives is prohibited during the session and within one hour prior to the commencement of a session and within one-half hour after recess or adjournment.

2-3. The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public (Montana Constitution, Art. V, Sec. 10(3)).

2-4. Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting (Montana Constitution, Art. V, Sec. 10(5)).

2-5. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

2-6. Unless he is excused, a member of the house or senate shall be present at every sitting of the house of which he is a member.

2-7. In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

2-8. If a quorum is present, five members of the senate may order a call of the senate, and fifteen members of the house of representatives may order a call of the house.

2-9. On a call of either house, a member who refuses to attend may be arrested by the sergeant-at-arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any per diem during his absence and is liable for the expenses incurred in procuring his attendance.

2-10. During a call of either house, all business of that house shall be suspended. After a call has been ordered no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

2-11. If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

CHAPTER 3
Legislative Employees

3-1. The legislature shall prescribe the compensation of the officers and employees of each house by joint resolution. Each house shall prescribe

the duties of its officers and employees and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

3-2. Except as provided in Joint Rule 3-3 and Joint Rule 3-4, the business manager, subject to the supervision of the committee on legislative administration of each house and subject to the approval of the respective houses, shall be responsible for personnel.

3-3. The committee on legislative administration of each house shall appoint secretaries for standing or special committees on recommendation of the committee chairman, subject to the approval of the respective houses. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The director of the Legislative Services Division of the Legislative Council shall hire all engrossing and enrolling typists and proofreaders.

3-4. The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

3-5. The secretary of the senate and chief clerk of the house of representatives are responsible to the presiding officers of their respective houses. Their duties are:

(a) To have custody of all records, bills, documents and other papers.

(b) To supervise the making and examination of the journal, and the handling of bills and resolutions.

(c) To deliver to the appropriate officers or offices, as set forth in these rules during the session or at the close of each session, the journal, bill books and resolution books, and all copies of introduced and engrossed bills and joint resolutions.

(d) To collect from the chairman or secretaries of all standing committees, special committees, committees of the whole, and conference committees, the minutes of such committees and deliver them to the state historical society.

3-6. Journal clerks, bill clerks, typists, and other employees responsible for legislative functions, except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders, are immediately responsible to the secretary of the senate or the chief clerk of the house, subject to the general supervision of the presiding officer. Engrossing and enrolling clerks are immediately responsible to the director of the Legislative Services Division of the Legislative Council under the direction of the bills committee.

3-7. The duties of the engrossing and enrolling clerks are:

(a) To engross or enroll all bills delivered to them within forty-eight hours after they have been received, unless further time is granted, in writing, by the presiding officer of the house in which the bill originated.

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(b) To correct clerical errors, with the consent of the secretary of the senate or chief clerk of the house of representatives, in any bill originating in the house by which they are employed. Clerical errors such as the following may be corrected:

(i) errors in spelling

(ii) errors in numbering sections

(iii) adding or deleting underlining or lines through matter to be stricken

(iv) material copied incorrectly from the most recent Revised Codes of Montana.

The secretary of the senate or chief clerk of the house shall obtain written permission from the principal sponsor before such corrections are made.

When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section.

3-8. (1) The sergeants-at-arms are responsible to the presiding officers of their respective houses. Their duties are:

(a) To maintain order under the direction of the presiding officer.

(b) To execute commands and serve all processes.

(c) To receive, distribute and have custody of supplies.

3-9. The assistant sergeant-at-arms, doorkeepers, watchmen, janitors, pages and other employees responsible for general housekeeping functions are immediately responsible to the sergeant-at-arms, subject to the general supervision of the presiding officer.

3-10. The duties of the chaplain of each house are to open each day's session with a prayer.

3-11. A legislative aide or legislative intern is a person who has registered with the business manager and to whom the business manager has issued a distinctive identification form such as a name tag. The business manager may issue such identification only upon receiving written verification from a member that the person involved is serving him as an aide or intern. A person may not represent himself to be a legislative aide or intern unless he carries such identification. The sergeants-at-arms and doorkeepers shall enforce this rule.

No member may designate more than one aide or intern without the approval of the Joint Rules Committee.

3-12. An employee, legislative aide or legislative intern of either house is prohibited from lobbying as defined in Section 43-802 (1), R.C.M. 1947. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

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3-13. Disputes or complaints involving the competency or decorum of a legislative employee shall be referred to the committee on legislative administration of the house by which the employee is employed. The committee, in its discretion, may dismiss, suspend or retain the employee. The committee on legislative administration shall periodically review the roster of employees and shall dismiss surplus employees.

3-14. A business manager shall be employed to serve both the senate and house of representatives and shall be under the supervision of the Joint Legislative Administration Committee.

The duties of the business manager are as follows:

(1) Prior to a legislative session:

(a) order supplies for each house;

(b) requisition printing of:

(i) house and senate stationery,

(ii) all necessary report forms,

(iii) printout sheets for house and senate voting machines, and

(iv) name plates for desks;

(c) inventory all interoffice forms and duplicate a supply;

(d) clean all legislative committee rooms, offices, and house and senate chambers and prepare them for the session;

(e) prepare recommendation to senate committee on finance and claims and house committee on appropriations of proposed budget based on past sessions and anticipated expenditures;

(f) requisition rental of office equipment including duplicating machines, adding machines and calculators;

(g) requisition parking permits;

(h) collect applications for employment of legislative employees who are under the jurisdiction of the legislative administration committees in both houses;

(i) supervise installation and connections of legislative telephone services;

(j) assure that house and senate roll call and sound systems are serviced;

(k) order name tags for each legislator;

(l) prepare packets for lst legislative day including printed rules, telephone directory and pencils;

(m) assign committee space and order necessary committee signs for doors;

(n) verify guide service with General Services Division;

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(o) arrange for printing of seating charts;

(p) take responsibility and control of legislative equipment and furniture.

(2) During the session:

(a) verify hours for daily payroll and prepare payrolls for signature;

(b) prepare bimonthly financial report and distribute the report to legislative leaders in each house and to members of the senate committee on finance and claims and house committee on appropriations;

(c) order office supplies as required;

(d) prepare all claims for payment.

(3) Following the session:

(a) provide Legislative Council with keys to all legislative committee rooms during the interim;

(b) complete payroll forms and reports;

(c) prepare claims for bills incurred during session;

(d) take closing inventory of all furniture and equipment and keep the written inventory on file.

(4) Perform any other services for the leadership and the committees on legislative administration.

CHAPTER 4
Order of Business

4-1. After prayer, roll call, and report on the journal, the order of business of the senate and house of representatives is as follows:

(1) Communications and petitions

(2) Reports of standing committees

(3) Reports of select committees

(4) Messages from the governor

(5) Messages from the other house

(6) Motions

(7) First reading and commitment of bills

(8) Second reading of bills (committee of the whole)

(9) Third reading of bills

(10) Unfinished business

(11) Special orders of the day

(12) Announcement of committee meetings

To revert to or pass to a new order of business requires only a majority

vote. Unless otherwise specified in the motion to recess, the house involved shall revert to order of business No. 1 when reconvening after a recess.

CHAPTER 5
Motions

5-1. When a motion is made it shall be restated by the presiding officer, and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

5-2. When a question is under debate no motion may be made except the following privileged and subsidiary motions which have precedence in the order listed:

(1) To adjourn

(2) For a call of the house

(3) To recess

(4) Question of privilege

(5) To lay on the table

(6) For the previous question

(7) To postpone to a certain day

(8) To refer or commit

(9) To amend

(10) To postpone indefinitely.

A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to rule 5-4.

5-3. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

5-4. Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the fifty-fourth day of the session shall be disposed of when made. A motion to recall a bill from the other house constitutes notice to reconsider, and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may be made only under order of business No. 6, and under that order of business takes precedence over all motions except motions to recess or adjourn.

5-5. When a motion to reconsider is laid on the table, a two-thirds

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majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

5-6. (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

5-7. A call of the house is not in order after the previous question is ordered, unless it appears upon an actual count by the presiding officer that a quorum is not present.

5-8. The following motions are not debatable:

(1) To adjourn

(2) For a call of the house

(3) To recess

(4) For parliamentary inquiry

(5) For suspension of the rules

(6) To lay on the table

(7) For the previous question

(8) To limit, extend the limits of, or to close debate

(9) To amend an undebatable motion

(10) To divide a question

(11) To pass business in committee of the whole

(12) To take from the table

(13) A decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision

(14) All incidental motions, such as motions relating to voting or other questions of a general procedural nature.

5-9. A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

5-10. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

CHAPTER 6

Bills and Resolutions

A.—Form of Bills—Definition of Resolutions—General Provisions

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6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are:

(1) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used to amend the rules of one house or to provide for the internal affairs of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

A copy of every simple resolution is to be transmitted after adoption to the secretary of state by the secretary of the senate or chief clerk of the house.

(2) A joint resolution must be adopted by both houses and is not approved by the governor. It may be used to express desire, opinion, sympathy, or request of the legislature; to amend the joint rules; to ratify or propose amendments to the United States Constitution; and to direct changes to, repeal, or direct adoption of, a rule in the Montana Administrative Code. Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

A copy of every joint resolution is to be transmitted after adoption to the secretary of state by the secretary of the senate or chief clerk of the house.

6-2. Bills shall be typewritten on paper eight and one-half by eleven inches with 25 numbered lines, and shall be introduced in quadruplicate. Pica type and a good black ribbon must be used. Bills shall be numbered at the foot of each page (except page one) and shall have white covers of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. Sections of the most recent Revised Codes of Montana repealed or amended in a bill shall be stated in the title except for general appropriation bills and bills for the codification and general revision of the laws. Introduced bills will be reproduced on white paper and distributed to legislators.

6-3. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the state of Montana".

A bill shall be used to propose amendments to the Constitution of the State of Montana and shall not be subject to the veto of the governor (Montana Constitution, Art. VI, Sec. 10(1)).

6-4. All appropriation bills shall originate in the House of Representatives.

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The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject (Montana Constitution, Art. V, Sec. 11 (4)). Appropriation bills for the operation of the legislature shall be introduced by the chairman of the house committee on appropriations.

6-5. Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage (Sections 43-507 and 43-509, R.C.M. 1947).

B.—Introduction

6-6. Bills will be checked by the staff of the Legal Services Division of the Legislative Council prior to consideration by a committee of the legislature, for proper format, style, and legal form. A stamp shall be affixed to the bill cover and initialed indicating this review. If such stamp is not affixed at the time the bill is delivered to the appropriate committee chairman, the chairman shall cause the bill to be transmitted to the Legal Services Division for such review. Members should make every effort to present proposed bills to the Division in advance of introduction of the bill. Bills will be entered on the automated bill drafting equipment and typed to facilitate a more rapid reproduction. If a bill is not so entered prior to introduction, it will not be considered by any committee until it has been so entered.

A bill may be introduced by endorsing it with the name of a member or committee and presenting it to the chief clerk or secretary in quadruplicate. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each session of the legislature in separate series in the order of their receipt.

Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of _____ (Name of Agency or Committee)".

Bills may be prefiled, numbered and preprinted prior to a legislative session. This will be the responsibility of the staff of the Legislative Council. Actual signatures may appear on the face of the prefiled bill or signatures may be obtained on a consent form from the Legislative Council. Additional sponsors may be added at the time of introduction on the first legislative day, on motion of the chief sponsor. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

All prefiled bills will be made available to the public.

6-7. Bills may be introduced until 5 p.m. on the eighteenth legislative day, except revenue bills and appropriation bills.

All bill drafting requests must be submitted to the Legislative Council staff by 5 p.m. of the fourteenth legislative day. A sponsor of a bill drafted pursuant to a timely request, but which is not delivered by the eighteenth

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day by the Legislative Council, shall have forty-eight hours after delivery to introduce the bill. No other bills except revenue and appropriation bills may be introduced after 5 p.m. on the eighteenth legislative day.

Revenue bills must be introduced by 5 p.m. on the twenty-fifth legislative day. There is no time limit for introduction of appropriation bills.

Joint Resolutions affecting rules adopted in the Montana Administrative Code may be introduced and transmitted at any time during a session.

6-8. No bill may be introduced or received in a house after that house has finally rejected a bill during that session designed to accomplish the same purpose save upon approval by the rules committee of the house in which the bill is offered for introduction or reception.

Failure to override a veto does not constitute final rejection.

6-9. At least three-fourths of a standing committee must consent to the introduction of a committee bill.

C.—First Reading and Commitment

6-10. No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6.

Upon introduction or reception of a bill, the chief clerk of the house or the secretary of the senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

6-11. No bill shall be considered or become a law unless referred to a committee and returned therefrom.

6-12. Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

6-13. A bill may be recommitted at any time before its passage.

D.—Amendments and Substitute Bills

6-14. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length.

6-15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution Art. V, Sec. 11(1)).

6-16. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

6-17. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for a bill originating in the other house is adopted, the substitute bill shall be printed.

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6-18. Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated.

6-19. If a majority of a house recommends the passage of a bill originating in that house after it has been returned from a committee, not less than six hundred copies of the bill shall be printed on canary paper with all amendments incorporated into the printed copies. Bills referred to the bills committee of the house of origin for printing must be reported within three days unless further time is granted by that house.

E.—Engrossing and Enrolling

6-20. When a bill has been reported favorably by committee of the whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the bills committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended, contains no clerical errors, and is neatly written, it may be engrossed without retyping.

If a bill is amended by the standing committee or committee of the whole in the second house, the amendments will be included in a "reference" bill and distributed in the second house for third reading consideration. The amendments will also be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments will be distributed in the original house.

6-21. When a bill has passed both houses it shall be enrolled by the Legislative Services Division of the Legislative Council as an act of the legislature under the direction of the bills committee of the house of origin. An original and three duplicate typewritten copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side, with twenty-five unnumbered lines to the page. In sections amending existing statutes new matter shall be underlined, and matter stricken with a line through it shall be omitted. The typewriting shall be done with a black record ribbon, pica type, on paper 8-½ inches wide and 11 inches long. The original and two copies only of the bill shall be red lined. The history of the bill shall also be enrolled and placed in back of the bill in a white manuscript cover, upon which is written the number of the bill and the title.

When the enrolling has been completed, the bill shall be examined by the author and the bills committee and reported correctly enrolled.

The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall announce from the rostrum, the announcement to be entered in the journal, the specific bills to be signed by him and shall designate a time when such bill shall be signed, and he shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the

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last legislative day in which event it shall be signed that day. The fact of signing shall be entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

The original and two copies signed by the presiding officer of each house shall be presented by the bills committee to the governor. The bills committee shall take a receipt from the governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original and the unsigned copy shall be filed with the secretary of state. Signed copies with chapter numbers assigned pursuant to Section 82-2209, shall be filed with the clerk of the supreme court and the Legislative Services Division of the Legislative Council.

F.—Second Reading—Committee of the Whole

6-22. All bills which have been reported by a committee, accepted by the house concerned and printed, shall be posted on the calendar for consideration by committee of the whole. The sergeants-at-arms of the respective houses shall record the time each bill is received and the time the bill is placed on members' desks. Until the fiftieth legislative day, one day must elapse between the time a committee approved bill is placed on the members' desks and consideration by committee of the whole. Bills shall be arranged on the calendar in numerical order unless they are companion bills or are otherwise ordered by the house or committee of the whole of the house concerned.

6-23. Every bill considered in committee of the whole shall be read by a summary of its title and by its history and considered section by section.

6-24. Prior to adoption of a committee of the whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

6-25. When a committee of the whole report on a bill is rejected the bill shall remain on second reading.

6-26. Either house may resolve itself into a committee of the whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a committee of the whole, except as follows:

(1) The only motions in order are: to amend; to recommend passage or nonpassage; to recommend concurrence or nonconcurrence; to indefinitely postpone; to pass consideration; to rise; to rise and report; and to rise and report progress and ask leave to sit again.

(2) The committee may not appoint subcommittees.

(3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.

(4) Unless otherwise prescribed by either house before going into committee of the whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

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6-27. After a committee of the whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

G.—Third Reading—Governor's Veto

6-28. No bill shall become a law except by vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal (Montana Constitution, Art. V, Sec. 11(1) and (2)).

Any vote in one house on a bill proposing an amendment to the Montana State Constitution where the mathematical possibility exists of obtaining the necessary two-thirds (⅔) vote of the legislature will cause the bill to progress as though it had received the majority vote.

6-29. Every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in committee of the whole; and the third, which shall be by complete title, prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

6-30. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and referendum measures of the legislature, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become a law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

6-31. Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the governor's veto shall be overridden. A vote on the motion shall be determined by

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roll call. If two-thirds of the members present vote "aye" the veto is overridden. If two-thirds of the members present do not vote "aye" the veto is sustained.

6-32. If the governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

H.—Transmittal of Bills

6-33. Each house shall transmit to the other with any bill all relevant papers. When a house bill is transmitted from the house of representatives to the senate, the secretary of the senate shall give a dated receipt for the bill to the chief clerk of the house. When a senate bill is transmitted to the house of representatives, the chief clerk of the house shall give a dated receipt to the secretary of the senate.

6-34. No bills, except for appropriation bills, revenue bills and amendments considered by joint committee need to be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the forty-fifth legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting shall determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted after the fifty-fifth legislative day thereof.

Appropriation and revenue bills shall be transmitted from the original house on or before the fiftieth day unless two-thirds of the members present and voting in the receiving house shall determine that the bill may be transmitted after the fiftieth day.

6-35. When a bill has received its third reading or has been rejected, the house that considered the bill shall immediately transmit it to the other house with notice of its action.

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6-36. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction, based on the Legislative Council staff recommendation.

The state budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within six (6) days, unless further time is granted by the presiding officer or committee making the request based upon a written statement from the budget director that additional time is necessary to properly prepare the note.

A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be printed and placed on the members' desks.

Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additonal funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

A fiscal note also may be requested on a bill and on an amendment by:

(1) a committee considering the bill, or

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading, or

(3) the chief sponsor through the presiding officer.

The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note (Sections 43-1001 through 43-1006, R.C.M. 1947).

CHAPTER 7
Committees

7-1. (1) The committee on legislative administration of each house shall consider all matters concerned with seating, mileage and per diem, legislative employees, the control of the legislative property, and the budgeting for and expenditure of appropriations for the operation of the legislature, in cooperation with the business manager.

(2) All expenditures of money appropriated for the operation of the legislature must be approved by the committee on finance and claims in the senate or the committee on appropriations in the house.

7-2. A standing committee shall submit a written report in triplicate on all bills or matters referred to it within 7 days after reference, unless

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at the request of the committee and for good cause shown, further time is granted by the house concerned.

7-3. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

7-4. All committees shall keep minutes of their meetings and, at the close of the session, shall make five complete copies and shall turn the original of the minutes over to the chief clerk of the house or secretary of the senate for delivery to the historical society. The majority and minority leader of each house and the Legislative Council shall each be given one copy of the minutes.

7-5. The committee on bills and journal, the rules committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the bills and journal committee shall stand approved without formal action.

7-6. All bills providing for an appropriation of public moneys may first be considered by a joint committee composed of the members of the senate committee on finance and claims and the house committee on appropriations, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the house committee on appropriations who shall be chairman of the joint committee.

7-7. The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides, subject to the control of the presiding officer under rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the senate committee shall be chairman of all joint committees.

7-8. If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the senate and the house of representatives cannot agree, the other house shall appoint a committee consisting of the same number of members. They shall meet at a convenient time, to be agreed upon by their chairman, and having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to the disputed amendment.

If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

7-9. In joint committees other than conference committees, members vote individually and not by houses. Because conference committees are joint meetings of separate committees, in conference committees the committees from each house vote separately, and a majority of each committee must agree before any action may be taken.

7-10. When a conference committee report is filed with the secretary or clerk the same shall be read under order of business No. 3, select

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committees, and placed on the calendar for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day.

CHAPTER 8
Rules and Journal

8-1. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

8-2. The proceedings of each house which shall be entered on its journal include:

(1) the title and number of each bill when it is introduced; subsequent references may be by number only;

(2) every motion and the name of the member making it;

(3) proposed constitutional amendments which have been voted for by two-thirds of the members (Montana Constitution, Art. XIV, Sec. 8);

(4) committee reports;

(5) roll call votes;

(6) messages from the governor and the other house;

(7) an entry of the oath taken by the members (Sec. 43-209, R.C.M. 1947).

8-3. The bills and journal committee of each house shall supply the director of the Legislative Services Division of the Legislative Council with the contents of the daily journal to be programmed on automated equipment, examine its journal, distribute a daily journal to all legislators, correct any errors, and report each legislative day immediately after roll call.

8-4. The journal of the senate must be authenticated by the signature of the president, and the journal of the house of representatives by the signature of the speaker. The distribution of the completed journals shall be made by the Legislative Services Division of the Legislative Council (Sec. 43-304, R.C.M. 1947).

8-5. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any rules committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule or any change in the rules of either house shall be transmitted to the other house for informational purposes.

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8-6. Mason's Manual of Legislative Procedure governs the proceedings of the senate and house of representatives in all cases not covered by these rules.

8-7. The Legislative Council shall codify and publish in one volume the rules of the senate, the rules of the house of representatives and the joint rules of the senate and house of representatives. Upon adoption, the secretary of the senate and the chief clerk of the house of representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending senate, house or joint rules, and with copies of all minutes and reports of the rules committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the senate and house of representatives.

8-8. Pursuant to the authority established in sections 43-901 through 43-904, the following fee schedule is established for the legislative proceedings:

One complete set of the proceedings of any regular session, $200; an additional $75 is required for mailing by first-class mail; an additional $100 is required for airmail delivery.

One complete set of the proceedings of any special session, $25.

Single copies of bills, resolutions or amendments may be purchased according to the length of the document as follows:

1-15 pages.....$ .25

16-40 pages.....$ .50

41-100 pages.....$ .75

101-200 pages.....$1.00

Over 200 pages.....$2.00

Single copies of status sheets, status of proceedings, indices.....$ .10

Copies of enacted bills.....cost of reproduction.

CHAPTER 9
Voting Procedure

9-1. Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

9-2. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and shall not vote thereon.

9-3. Amendments to the constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the legislature, the amendment shall be deemed approved by the legislature (Montana Constitution, Art. XIV, Sec. 8).

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9-4. When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

9-5. A roll call vote shall be taken on the request of two members.

9-6. On a roll call vote the names of the members shall be called alphabetically, unless an electrical voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

9-7. (1) On third reading the question shall be stated as follows: "Senate (or house) bill number _____ having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electrical voting system is used the presiding officer shall ring the bell after stating the question and then state "Those in favor vote yea and those opposed vote no." After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause) "Does any member wish to change his or her vote?" (reasonable pause) "The clerk (secretary) will now record the vote."

9-8. Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is absent when the vote is taken.

9-9. An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the secretary of the senate or chief clerk of the house of representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

9-10. Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage of any bill or joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. A roll call vote shall be taken on non-substantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana state historical society (Montana Constitution, Art. V, Sec. 11(2)).

Approved January 16, 1975.

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SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS OF HIGHER EDUCATION TO ELIMINATE UNNECESSARY DUPLICATING DOCTORAL PROGRAMS AT THE STATE'S UNIVERSITIES.

WHEREAS, the University of Montana and Montana State University are operated primarily for the benefit of the people of the state of Montana, and

WHEREAS, these universities provide several doctoral programs which duplicate each other, and

WHEREAS, it is not in the interest of the people of this state to continue supporting this type duplication.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents of Higher Education be encouraged to eliminate unnecessary duplication in doctoral programs at the state's universities.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Board of Regents of Higher Education.

BE IT FURTHER RESOLVED, that the state Board of Regents of Higher Education report its progress in eliminating unnecessary duplication of doctoral programs to the next session of the legislature.

Approved February 12, 1975.

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF ADMINISTRATION, IN COOPERATION WITH THE MONTANA ARTS COUNCIL AND MONTANA CHAPTER AMERICAN INSTITUTE OF ARCHITECTS, TO INVESTIGATE THE FEASIBILITY OF CREATING A DESIGN REVIEW COMMISSION FOR NEW STATE-OWNED BUILDINGS.

WHEREAS, the state of Montana should strive to set examples of excellence when it constructs state buildings, and

WHEREAS, the quality of some state buildings recently constructed, when measured against the canons of the design professions, has been criticized, and

WHEREAS, a commission of distinguished architects and other design professionals, drawn from outside as well as within Montana, to review

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preliminary proposals for new state-owned buildings may be in the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the department of administration in cooperation with the Montana Arts Council and Montana Chapter American Institute of Architects, is requested to investigate the feasibility of creating a design review commission as described in this resolution and to recommend to the Governor or the Forty-fifth Legislature means of implementing such recommendations as the council and the department may consider appropriate.

Approved March 18, 1975.

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING PUBLIC AUTHORITIES TO SEEK A DISTRIBUTION POINT FOR MONTANA ALONG ANY ARCTIC GAS PIPELINE WHICH MAY BE CONSTRUCTED.

WHEREAS, proposals have been advanced for an Arctic Gas Pipeline, to bring natural gas from Alaskan and northern Canadian fields to various regions of the United States; and

WHEREAS, one major extension of this proposed pipeline would cross northeastern Montana without provision for distributing any of the gas thus transported to markets within Montana; and

WHEREAS, Montana needs to plan for alternatives to our present dependence on natural gas from the province of Alberta since such gas may not be available for export after a few years.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all responsible state authorities, including the Montana Energy Advisory Council and its constituent agencies, and federal authorities are urged to seek to obtain a distribution point for Montana along any pipeline built across the state to transport natural gas from arctic regions to American markets.

Approved March 12, 1975.

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE

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WESTERN GOVERNORS' CONFERENCE ON AGRICULTURE TO SEEK CONGRESSIONAL SUPPORT FOR STATE, REGIONAL, AND FEDERAL PROGRAMS DESIGNED TO MEET THE NEEDS FOR RANGELAND RESOURCES IN THE FUTURE, MORE SPECIFICALLY THE PROJECTED DEMANDS FOR LIVESTOCK GRAZING.

WHEREAS, rangeland (grasslands, shrublands, and forest areas that produce forage) is the largest single category of land in the United States, and has no alternative for contributing to food for man other than by way of grazing animals, and

WHEREAS, when efficiently developed and managed, ranges are competitive with other forage sources and can be grazed under systems that preserve or enhance the environment, improve wildlife habitat, water quality and quantity, and have potential to produce livestock grazing at higher levels to meet the nation's need for meat products, and

WHEREAS, fossil fuels will become more scarce and more costly in the future, and production of livestock on rangelands requires a lower energy input from fossil fuel sources than do production systems heavily dependent upon feed grains, and

WHEREAS, increased production of meat, lamb, and wool can contribute to a more favorable national balance of payments, and

WHEREAS, improved range management will result in more stable rural communities, a more stable cash flow, and a possible slowing of migration of younger people from rural areas, and

WHEREAS, the Western Range States have private, state, and federally controlled rangelands, and development and improvement programs (for fencing, control of noxious weeds, revegetation, etc.) must consider all lands included in management units regardless of ownership.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That we urge the adoption of a resolution at the Western Governors' Conference on Agriculture, to be held in April 1975 at Billings, Montana, that will support the establishment of programs for optimum development of western rangeland through improved cover of grasses, herbs, shrubs, and trees to reduce soil erosion and sedimentation, improve quantity and quality of water yield, and increase the productive capacity for all rangeland values and uses, and

BE IT FURTHER RESOLVED, that Congress support programs for development of the rangeland resources of the United States Departments of Agriculture and Interior, the States, and Regional Rangeland Resources Programs.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this joint resolution to the Montana Congressional Delegation, to the Secretaries of the United States Departments of Agriculture, Interior, and State, and to the Western Governors' Conference.

Approved March 28, 1975.

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SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA THANKING AND COMMENDING THE SENIOR CITIZENS WHO PARTICIPATE IN THE FOSTER GRANDPARENTS PROGRAM AT BOULDER RIVER SCHOOL AND HOSPITAL.

WHEREAS, there is an acknowledged need for closer, more personal relationships for the residents of Boulder River School and Hospital than the present staff can provide, and

WHEREAS, there is a group of interested and dedicated senior citizens who are working as foster grandparents to fulfill that need by providing companionship and services for more than one hundred (100) children who are under seventeen (17) years of age, and

WHEREAS, these fifty (50) or sixty (60) citizens work throughout the institution with children in feeding and dressing programs, speech development, teaching colors and shapes, taking the residents to whom they are assigned on walks, reading to their patients, and other similar direct care tasks, and

WHEREAS, many of the foster grandparents travel from Helena and Butte five (5) days each week for four (4) hours per day to work with these special children, and

WHEREAS, this program has been filling a critical need for love and affection among the residents at Boulder River School and Hospital since 1968, as well as providing a constructive, positive outlet for the senior citizens involved.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature expresses its thanks to the organizers of and participants in this Foster Grandparents program for Boulder River School and Hospital, and compliments all those who have made such a fine contribution to that institution and the state of Montana, and

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to Foster Grandparents, Rocky Mountain Development Council, Helena, Montana.

Approved March 15, 1975.

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA APPOINTING REPRESENTATIVES OF THE MONTANA LEGISLATURE TO SERVE ON THE WESTERN STATES FOREST TASK FORCE.

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WHEREAS, the forests of the Western States play a vital role in the economic development of these states; and

WHEREAS, there is an obvious need for developing means for protecting and fostering these forests so as to maximize yield while protecting the resource for future generations; and

WHEREAS, the subjects that require interstate cooperation include but are not limited to insect infestations, conservation, production and marketing, all of which know no state boundaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees of the Senate and the Speaker of the House of Representatives appoint two senators and two representatives to represent Montana on the Western States Forest Task Force, which shall operate as a clearinghouse for opinion from all the various interests involved in the Western States forests, and which shall include among its duties a report to the legislatures of the participating states and to the state delegations in the United States Congress concerning means of protecting and fostering the forests of the participating states.

BE IT FURTHER RESOLVED, that copies of this resolution shall be sent to the presiding officers of the legislatures of Washington, Idaho, Oregon and California.

Approved March 19, 1975.

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES DEPARTMENT OF TRANSPORTATION TO ADOPT A SET OF STANDARDS ON BRAKING POWER FOR RAILROAD CARS.

WHEREAS, the weight of loaded railroad cars is approaching the danger point; and

WHEREAS, railroads continue to load cars heavily; and

WHEREAS, it is in the best interest of railroad employees as well as the general public that a limit be placed on the weight of cars relative to braking power.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Department of Transportation is urged to adopt a set of standards; that a limit be placed on the weight of cars relative to braking power.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent

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to the secretary of the United States Department of Transportation and to the members of the Montana Congressional Delegation.

Approved March 31, 1975.

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS TO GOVERN ALL UNITS OF THE UNIVERSITY SYSTEM AS ONE (1) UNIT.

WHEREAS, the Montana Constitution established a Board of Regents and vested in that Board full power, responsibility and authority to supervise, coordinate, manage and control the Montana University System, and

WHEREAS, the Board of Regents shall have government and control of the units of the Montana University System, which shall be considered for all purposes one university.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this body urges the Board of Regents:

(1) To consider one university with all campuses as an alternative to the present structure of the University System for the following purposes:

(a) to promote campus cooperation,

(b) to assure maximum transferability of credits and courses,

(c) to avoid unnecessary duplication of courses and programs.

Approved April 3, 1975.

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PUBLIC SERVICE COMMISSION TO CONTINUE TO EXPAND THE STUDY BY CONSUMER COUNSEL ON REMUNERATION PAID TO OWNERS OF NATURAL GAS RATES FOR THEIR RESOURCE INTO AREAS OF ADEQUATE REGULATION AND EQUITABLE RATES FOR CONSUMERS.

WHEREAS, regulation and consumer rate approval should be functions of natural gas movement, reserves, supply, demand, field prices, and other objectified costs; and

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WHEREAS, regulation in the best interests of the people of the State of Montana should consider conservation and optimum utilization of natural resources; and

WHEREAS, adequate beneficial regulation should be supported by accurate and reconcilable data collection, assembly and dissemination by state agencies; and

WHEREAS, the world and national energy crisis dictates that Montana's regulation of this energy resource should be in concord with national and regional policies and precedents.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Public Service Commission is requested to establish necessary coordination and liaison with pertinent federal and state agencies, and develop and submit recommended policies and plans of action to the Legislature and undertake such fact-finding and related research as may be required to continue to expand the study by consumer counsel on remuneration paid to owners of natural gas rates for their resource into areas of adequate regulation and equitable rates for consumers.

Approved March 21, 1975.

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE OFFICE OF THE GOVERNOR OF THE STATE OF MONTANA TO STUDY SHELTER CARE AND DETENTION SERVICES FOR JUVENILES, AND TO DEVELOP A COMPREHENSIVE PLAN FOR SUCH SERVICES.

WHEREAS, the Forty-third Legislature enacted the "Montana Youth Court Act", which encourages the use of shelter care and holding facilities for the detention of juveniles pending court action, and

WHEREAS, there is a critical lack of such facilities, and

WHEREAS, a number of Montana communities have shown considerable interest in the development of such facilities, and

WHEREAS, Congress has enacted the "Juvenile Justice and Delinquency Prevention Act of 1974" and has directed the states to develop plans to implement the goals of this act and those of the "Omnibus Crime Control and Safe Streets Act of 1968", and

WHEREAS, section 223 (a) (12) of the "Juvenile Justice and Delinquency Prevention Act of 1974" provides that juveniles, who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention, but must be placed in shelter facilities.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, the office of the Governor of the state of Montana develop a comprehensive plan for shelter and detention care services for juveniles who are awaiting court orders or execution of court orders,

BE IT FURTHER RESOLVED, that the departments of Intergovernmental Relations, Institutions, Social and Rehabilitation Services, Health and Environmental Sciences, and Justice assist the Governor's office in developing the plan.

BE IT FURTHER RESOLVED, that the plan include: a philosophy of detention; a review of existing facilities and programs for detention; a designation as to state and local responsibilities within state organization; estimated costs of services and facilities, including alteration and remodeling of existing facilities; and recommendations as to content and scope of detention services.

BE IT FURTHER RESOLVED, that the comprehensive plan be reviewed by: the Montana Council on Criminal Justice, Standards and Goals; the Montana Probation Officers' Association; the Montana Board of Crime Control; the Montana Judges' Association; the Montana Corrections Association; the Montana Sheriffs' and Peace Officers' Association; and the Montana Association of Counties.

BE IT FURTHER RESOLVED, that the plan be submitted, with recommendations for legislation, to the Legislative Council four months prior to the convening of the Forty-fifth Legislative session.

Approved April 10, 1975.

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN A JOINT INTERIM SUBCOMMITTEE TO UNDERTAKE A STUDY OF LOG SCALING OPERATIONS IN MONTANA AND POSSIBLE MEANS BY WHICH THEY MAY BE REGULATED.

WHEREAS, log scaling measurements may vary considerably due to lack of accepted uniform standards of measurement; and

WHEREAS, log scaling is not regulated under Montana law, thus promoting distrust among loggers, timber owners, scalers, timber contractors, and mill operators; and

WHEREAS, the question of possible state jurisdiction over federal, state, and private log scaling operations needs to be resolved.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Committee on Priorities is requested to assign a joint interim subcommittee to undertake a comprehensive study of log scaling in Montana to determine acceptable uniform standards of measurement, state jurisdiction over federal, state, and private timber measurements, and possible regulatory procedures for log scaling. The subcommittee is urged to elicit information and participation from representatives of mill operators, loggers, scalers, and timber contractors.

BE IT FURTHER RESOLVED, that the subcommittee report its findings and recommendations to the Forty-fifth Legislature.

Approved April 3, 1975.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT PRESIDENT FORD RELEASE IMPOUNDED FUNDS WHICH HAVE BEEN EARMARKED FOR THE NATIONAL FOREST PROGRAM AND THAT THE CONGRESS, RECOGNIZING THE SERIOUSNESS OF THE CURRENT UNEMPLOYMENT PROBLEM AND FUTURE FORESTRY NEEDS OF THE NATION, PROVIDE THE ADDITIONAL APPROPRIATIONS NECESSARY TO IMPLEMENT AT LEAST THE MODERATE SUPPLY ALTERNATIVE OF THE NATIONAL FOREST ENVIRONMENTAL PROGRAM FOR THE FUTURE.

WHEREAS, the national forests in Montana are established by law and dedicated to the principles of multiple-use management which provide for a continuing supply of a variety of goods and services for the benefit of the American people, and

WHEREAS, the national forests in Montana, together with the thousands of small owner woodlands, are the major source of raw materials for Montana's wood-using industries, and

WHEREAS, a strong, solvent forest products industry is essential for the future welfare of the state of Montana and this nation, and

WHEREAS, wood products from the forest are a renewable resource that requires less energy in their manufacture than substitutes and contribute directly to the energy pool, and

WHEREAS, the volume and quality of tomorrow's timber supplies are dependent upon capital investments in planting and thinning, and

WHEREAS, almost fifty percent (50%) of small owner woodlands in Montana are lying idle or poorly stocked and together with much of the national forest land are in need of planting of forest improvement and would benefit directly from assistance and incentive funds provided under this program, and

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WHEREAS, failure to make these investments in planting programs and timber stand improvement projects in Montana's forests will result in a serious timber shortage and economic chaos for Montana's timber industries, and

WHEREAS, revenues generated from the various products produced by the national forests have historically enriched the treasury of the United States more than the appropriations that have been allocated to the Forest Service, and

WHEREAS, funds amounting to ten million dollars have been impounded by President Ford and Montana's share of those impounded funds would be five hundred thirty-one thousand dollars, and

WHEREAS, if the National Forest Environmental Program for the future were fully funded at the moderate supply alternative level there would be additional employment created in this state for over a thousand people as well as providing youth conservation corps and job corps training for hundreds of Montana's unemployed young people, and

WHEREAS, Congress, using an expanded program of tree thinning and planting could readily provide jobs for one thousand people to offset jobs being lost and to help build homes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President be requested to take note of the grave unemployment problem in Montana and release the funds as part of his avowed program to put people back to work.

BE IT FURTHER RESOLVED, that the members of this Legislature are opposed to this fund withholding action and respectfully request the President to release the funds without delay.

BE IT FURTHER RESOLVED, that President Ford and the Congress recognizing the seriousness of the unemployment problems and the future forestry needs of the nation provide the additional appropriations necessary to implement at least the moderate supply alternative of the National Forest Environmental Program for the future.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, the Montana Congressional Delegation, and the Secretary of Agriculture by the Montana Secretary of State.

Approved March 31, 1975.

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES

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TO TAKE WHATEVER ACTION IS NECESSARY TO RELEASE IMPOUNDED HIGHWAY FUNDS.

WHEREAS, an ever-increasing jobless rate in the state of Montana demands that immediate steps be taken to create new jobs and maintain present jobs; and

WHEREAS, various proposals have been made for providing jobs including public service jobs to reduce the jobless rate; and

WHEREAS, whatever solution is finally found, an administrative structure would be needed to implement that solution, and

WHEREAS, funds made available to the United States through taxation for the purpose of developing highway transportation systems are now being impounded and held back against the best interests of the people who paid the taxes to provide them; and

WHEREAS, the expenditure of highway trust fund money in this time of recessionary economics would provide jobs and create needed capital to promote the retention of many more jobs without necessitating the creation of additional administrative structures in government; and

WHEREAS, the impoundment of highway construction funds has prevented the construction of vital highway projects and allowed known safety hazards to go on uncorrected to the detriment of the safety and general welfare of the people of Montana; and

WHEREAS, the impoundment of highway construction funds has led to uncertainty and inefficiency in the administration of the Department of Highways by preventing the establishment of reasonable, orderly, and sustained highway programs; and

WHEREAS, the taxpayers of Montana and the nation have sustained great losses in purchasing power with their money impounded during a period when construction-related costs have inflated by forty-two percent (42%); and

WHEREAS, it is clear that the best use of the impounded funds would be to put Montana workers on the job building vitally needed public highways and improving the general economic climate with all the auxiliary job benefits their paychecks provide.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President and the Congress of the United States is requested to take whatever action is necessary to release impounded highway construction funds in a manner that is designed to promote a reasonable, orderly, and sustained highway program.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States and the members of the Montana Congressional Delegation.

Approved March 18, 1975.

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SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE NATIONAL PARK SERVICE TO PURCHASE THE SITE OF THE BATTLE OF THE ROSEBUD AND KOBOLD BUFFALO JUMP.

WHEREAS, located on the Kobold Ranch in the Rosebud Valley in Big Horn County, near Kirby, Montana are two sites of scientific and historical significance:

(1) The site of the Battle of the Rosebud fought eight (8) days before the Custer massacre, on June 17, 1876, between General George Crook's one thousand three hundred twenty-five (1,325) men and approximately four thousand (4,000) Sioux and Cheyenne warriors. Many historians say this battle led to the famed demise of General Custer.

(2) The Kobold Site 24BH406 Buffalo Jump which has been excavated, studied, and recorded. Evidence gathered from the site added a new dimension to Northwestern Plains archaeology concerning the time depth of systematic buffalo jumping; and

WHEREAS, because of the significance of the Battle of the Rosebud in American history, its site was entered in the National Register of Historic Places on August 21, 1972; and

WHEREAS, the present owners of the ranch have at their own expense, marked some of the most important points of the battleground; have guided visitors touring the area, and have carefully preserved the site; and

WHEREAS, in 1956 J.W. Vaughn wrote a book about the battle entitled, "With Crook at the Rosebud"; and

WHEREAS, there are no funds available to insure future preservation of the site nor any assurance that future owners might not bar the public from the ranch; and

WHEREAS, the present owners of the Kobold Ranch are willing to sell the sites to the National Park Service to insure that the historic sites and their stories be preserved for future generations; and

WHEREAS, the Kobold Ranch is a tangible reminder of the history of Montana and of the nation and reflects the beauty and peace of the country.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the National Park Service, under the National Historic Preservation Act, is urged to purchase the site of the Battle of the Rosebud and the Kobold Buffalo Jump.

BE IT FURTHER RESOLVED that a copy of this resolution be sent by the Secretary of State to the National Park Service, the Montana Con-

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gressional Delegation and to the Recreation and Parks Division of the Department of Fish and Game.

Approved April 9, 1975.

SENATE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE UNDERSTANDING AND INTENT OF THE LEGISLATURE WITH REGARD TO PERIODIC MOTOR VEHICLE INSPECTION STANDARDS PRESENTLY BEING DEVELOPED BY THE DEPARTMENT OF JUSTICE, MOTOR VEHICLE DIVISION.

WHEREAS, the Forty-third Legislature enacted an act to require motor vehicle inspections in the state of Montana pursuant to requirements of Title 23, Section 402, U.S. Code, and rules promulgated thereunder; and

WHEREAS, the Legislature directed in section 5 of that act, now Section 53-1105, R.C.M. 1947, that a vehicle need be in good condition and proper adjustment in accordance with minimum applicable federal vehicle safety inspection standards; and

WHEREAS, at the time the bill was heard in the Senate Committee on Highways and Transportation, February 28, 1974, committee members sought to ascertain what was meant by the language in section 5 of the bill; and

WHEREAS, committee minutes show that the language in question was considered a reference to guidelines contained in "Vehicle in Use Standards" issued by the Department of Transportation; and

WHEREAS, "Vehicle in Use Inspection Standards" now in force are found in Part 570, Subpart A, of Title 49 Code of Federal Regulations; and

WHEREAS, a preliminary draft of a Montana vehicle inspection manual includes inspection items not found in 49 CFR 570; and

WHEREAS, some inspection items included in the draft concern Montana statutory requirements that are enforced by law enforcement agencies in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, the Legislature understands and intends that the provisions of Section 53-1105 shall be interpreted to mean that a vehicle need only be inspected on those items in force in 49 CFR 570.

BE IT FURTHER RESOLVED, that the Legislature recognizes and endorses the efforts made by the Montana Highway Patrol and other law enforcement agencies in enforcing statutory equipment requirements on

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motor vehicles and finds that such continued efforts are sufficient to assure the continued compliance with safety equipment laws.

Approved April 17, 1975.

SENATE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE ANACONDA COMPANY TO RECONSIDER ITS ACTIONS TO ELIMINATE JOBS IN THE STATE OF MONTANA.

WHEREAS, the legislators of the state of Montana are dedicated to the protection of Montana citizens and the economic situations which affect them; and

WHEREAS, companies totally affecting the well being of communities should assume responsibility of that effect; and

WHEREAS, the Anaconda Company is the major industrial influence and provider of jobs in several Montana communities; and

WHEREAS, worldwide economic influences have admittedly resulted in the present reduction in demand for copper and aluminum with a resulting increase in refined metal inventories; and

WHEREAS, over the longer range, there is every indication that the demand for copper and other metals will become increasingly strong; and

WHEREAS, the elimination of jobs in the several Anaconda Company operations in Montana has resulted in undue hardship for the affected employees and possible irreversible losses of the essential skilled and unskilled labor base; and

WHEREAS, work force disruption for short periods adversely affects the morale of all company employees and results in irreversible changes in the cities in which they live; and

WHEREAS, economic devastation of any vital community has profound effect on the entire state; and

WHEREAS, with careful management considerations it may be possible to overcome the minimal savings realized through layoffs by other measures designed to have less impact on workers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Anaconda Company is urged to recognize and accept the civic responsibility that is so important to those communities in which the company is intricately intertwined.

BE IT FURTHER RESOLVED, that the Anaconda Company is urged

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to reconsider its decision to eliminate jobs in its operations in the state of Montana, recognizing also its economic responsibility.

BE IT FURTHER RESOLVED, that the company is urged to make every effort to mitigate and alleviate the adverse results of decisions to eliminate jobs.

BE IT FURTHER RESOLVED, that the Anaconda Company is urged to initiate and provide leadership for these communities in the areas of alternative employment and further protect those communities' vital economic and labor structures.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the president of the Anaconda Company and to the members of the Montana Congressional Delegation.

Approved April 17, 1975.

SENATE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BURLINGTON NORTHERN RAILROAD TO RECONSIDER ITS ACTION REDUCING WORK FORCES IN THE STATE OF MONTANA.

WHEREAS, the Burlington Northern is the major railroad serving the state of Montana; and

WHEREAS, economic problems in the United States as a whole have admittedly resulted in a temporary reduction in rail shipments on the Burlington Northern Railroad; and

WHEREAS, anticipated large movements of coal in the near future promise to redress the present low shipment problem on the railroad; and

WHEREAS, recent layoffs of both shop and operating employees of the Burlington Northern in Montana as a result of the short term reduction of shipments has resulted in disproportionate hardship for both affected employees and the small communities in which they live; and

WHEREAS, disruption of the work force for a short run affects the morale of all company employees and results in drastic changes in the communities in which they live; and

WHEREAS, these damages may overcome the minimal labor savings realized when viewed from a broader perspective; and

WHEREAS, dislocated employees might not be readily available for rehire when trained personnel are needed to meet the demand of increased coal shipments resulting in a shortfall of demand satisfaction.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Burlington Northern is urged to reconsider its actions in reducing work forces in the state of Montana giving consideration to long-term as well as short-term considerations of these actions.

BE IT FURTHER RESOLVED, that the company is urged to make every effort to mitigate and alleviate the adverse results of decisions concerning work force reduction.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the president and the regional vice-president in Billings of the Burlington Northern Railroad and to the members of the Montana Congressional Delegation.

Approved April 18, 1975.

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

THAT THE FOLLOWING RULES ARE ADOPTED:

HOUSE RULES

CHAPTER 1
Presiding Officer — Decorum, Order and Debate

H1-1. The house of representatives shall elect one of its members speaker. The house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

H1-2. The house shall elect one of its members speaker pro tempore who shall perform all of the duties of the speaker in the absence of that officer, and on such other occasions as the speaker may request.

H1-3. No member shall speak for longer than thirty minutes in debate on any one motion or question.

H1-4. During committee reports the member reporting the measure under consideration from a committee may, if the measure is debated, open and close. If the debate extends beyond one day he may have thirty minutes to close, even if he has used thirty minutes in opening.

H1-5. No member shall speak more than once on the same question without the unanimous consent of the house, unless he has proposed or introduced the matter under debate, in which case he may speak in reply after all members choosing to speak have spoken.

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CHAPTER 7
Committees

H7-1. The standing committees of the house are as follows:

1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Bills and Journal
4. Business and Industry
5. Education
6. Fish and Game
7. Highways and Transportation
8. Judiciary
9. Labor and Employment Relations
10. Legislative Administration
11. Local Government
12. Natural Resources
13. Public Health, Welfare and Safety
14. Rules
15. State Administration
16. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on. No standing committee may consist of more than 17 members.

H7-2. The committee on rules shall consist of the speaker, the majority leader, and two other members of the majority party appointed by the speaker, the minority leader, and three members of the minority party designated by the minority leader and appointed by the speaker. The speaker shall appoint other standing committees, select committees, and house membership on joint committees and conference committees.

H7-3. All bills having "Do Pass" committee recommendations shall be deemed adopted and shall be placed on second reading.

If the committee report is that the bill "Do Not Pass", the bill shall be posted by the chief clerk of the house and the members of the house have 24 hours in which to indicate in writing to the chief clerk that they wish to have the bill debated. If a member so indicates, the bill will be placed on second reading for debate. If no such indication is made, the committee report will be voted on order of business No. 2 without debate.

CHAPTER 8
Rules and Journal

H8-1. (1) A motion to amend or adopt a rule of the house shall be

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referred to the committee on rules and journal, which shall report no later than the next legislative day. Unless recommended by the committee on rules and journal, no house rule shall be amended or adopted except by a two-thirds vote.

(2) A house rule may be suspended temporarily for a specified purpose by unanimous consent.

H8-2. Mason's Manual of Legislative Procedure governs the proceedings of the house of representatives in all cases not covered by these rules.

Approved January 13, 1975.

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING CERTAIN LEGISLATIVE OFFICERS AND EMPLOYEES TO PREPARE THE BUSINESS OF THE REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, the preparation of business of the regular session of the Forty-fourth Legislature encompasses the employment of certain legislative officers and employees of the House.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the officers and employees of the House herein named, are hereby employed by the House of the regular session of the Forty-fourth Legislature of the state of Montana to prepare the business incident to and consequent upon the convening of the regular session of the Forty-fourth Legislature.

OFFICERS AND EMPLOYEES	TOTAL NO. OF DAYS OR	TOTAL NO. OF HOURS
Pat McKittrick, Speaker-House (plus approximately $40 for phone calls)	6 days	48 hours
John Driscoll, Maj. Leader (plus approximately $100 for phone calls)	5 days	40 hours
Clyde Neu, Asst. Sgt.-at-Arms	3 days	24 hours
Steve Carney, Asst. Sgt.-at-Arms	7 days	55 ½ hrs.
Bob Stephens, Sgt.-at-Arms	5 days	37 hours
Bobbie Murphy, Sec./Maj. Leader	5 days	28 ½ hrs.
Virginia Broughton, Sec./Speaker	5 days	33 hours
Mel McGuinn, Sec./Minority Leader	3 days	24 hours
Ed Smith, Chief Clerk	25 days	see day col.
Martha McGee, Asst. Chief Clerk	22 days	127 ½ hrs.
Carol Williams, Sec./Chief Clerk	4 days	28 hours
Bea Burr, Sec./Asst. Chief Clerk	4 days	32 hours
Kathy Fuller, Stenographer	4 days	28 ½ hrs.
Ed Sheehy, Reading Clerk	4 days	28 hours
Linda Barrett, Journal Clerk	2 days	10 hours
Pat Tyanich, Bills Clerk	13 days	68 hours
Diann Fradette, Asst. Bills Clerk	1 day	6 ½ hrs.
Shaun Devine, Bills Coordinator	3 days	17 hours

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Wanda Gough, Chief Stenographer	2 days	8 hours
Vicki Kroll, Asst. Chief Steno	4 days	20 hours
Anna Alstad, Secretary	1 day	3 hours
Jo Lahti, Sec./Taxation Comm.	4 days	24 hours
Leroy Broughton, Jr. Asst. Sgt.-at-Arms	7 days	50 ½ hrs.

The payrolls covering each employment shall be authenticated by the Speaker of the House of Representatives and the Legislative Business Manager and payment of the same shall be made separate and out of funds appropriated for the regular session of the Forty-fourth Legislature at the rate specified in House Joint Resolution No. 5, effective January 28, 1975.

This resolution shall be effective on adoption by the House.

Approved March 5, 1975.

HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA IN MEMORY OF WAYNE ESTES.

WHEREAS, it is fitting and proper that this deliberative body pay tribute to the memory of Wayne Estes on this, the tenth anniversary of this tragic death, and

WHEREAS, the memory of Wayne Estes, Anaconda's most renowned former sportsman will be honored on this eighth day of February by officials at Utah State University, and

WHEREAS, Wayne Estes is remembered by Montanans not only as Montana's finest All-American collegian, but as an outstanding and promising young man, and

WHEREAS, throughout his tragically short but brilliant athletic career both at Anaconda and Utah State, Wayne Estes served as an inspiration to aspiring young athletes throughout Montana to the betterment of Montana's youth.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That we hereby express our esteem and respect to the memory of Wayne Estes of Anaconda and extend to the members of his family our sincere sympathy and community of spirit in their great and irreparable loss.

BE IT FURTHER RESOLVED, that a copy of this memorial be entered upon the journal of the House of the Forty-fourth Legislature and that original copies of this memorial, signed by the Speaker of the House be transmitted by the Clerk of the House to the parents of Wayne Estes and that an original copy of this memorial be filed with the Montana Historical Society.

Approved March 5, 1975.

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HOUSE RESOLUTION NO. 4

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE APPOINTMENT OF A SPECIAL SELECT COMMITTEE ON CENSURE, TO INVESTIGATE THE CAMPAIGN PRACTICES, PRECEDING THE 1974 MONTANA GENERAL ELECTION.

WHEREAS, on July 1, 1974, a committee calling itself the "Legislative Campaign Committee" filed the necessary papers in the office of the Montana Secretary of State. (See Exhibit "A", attached.)

WHEREAS, on July 19, 1974, the "Legislative Campaign Committee" sent copies of a letter to several groups and organizations, throughout the State of Montana, with the following names included thereon: Representative Elmer Schye, Chairman; Representative Oscar Kvaalen, House Minority Leader and Representative Robert Marks, Vice Chairman. (See Exhibit "B", attached.)

WHEREAS, on November 3, 1974, there appeared two (2) advertisements in the "Missoulian" newspaper, "Paid For By The Legislative Campaign Committee, Box 116, Clancy, Montana, Elmer Schye, Chairman." (See Exhibits "C & D", attached.)

WHEREAS, on November 3 and 4, 1974, there appeared two (2) separate advertisements, on two (2) separate days in the "Sunday Independent Record" and the "Independent Record" "Paid For By The Legislative Campaign Committee, Box 116, Clancy, Montana, Elmer Schye, Chairman." (See Exhibit "E", attached.)

WHEREAS, the "Legislative Campaign Committee", attempted to publish an advertisement in the "Billings Gazette", for two (2) advertisements on November 3, 1974, of which the two (2) spaces were paid in advance and the money ($510.40) paid on October 29, 1974; however, the advertisement was cancelled by the "Billings Gazette" and the money ($510.40) was refunded to the "Legislative Campaign Committee, Box 116, Clancy, Montana, Elmer Schye, Chairman", on November 8, 1974. (See Exhibit "A", attached.)

WHEREAS, on November 22, 1974, the "Legislative Campaign Committee" filed their campaign expenditure report in its entirety, in the office of the Montana Secretary of State. (See Exhibit "A" attached.)

WHEREAS, the principle involved in this issue greatly outweighs any individual, for the advertisements were directed to highly mislead the public.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a select committee of eight (8) be appointed to investigate the possible censure of the three (3) members mentioned previously.

BE IT FURTHER RESOLVED, that the select committee shall have the authority to conduct its investigation under the procedures defined in Part

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X "Legislative Investigations", Chapter 75, "Investigations By Legislative Bodies", Sections 795, 800, 801, and 802 of Mason's Manual of Legislative Procedures.

BE IT FURTHER RESOLVED, that the eight (8) committee members shall be appointed in accordance with "Special or Select Committees" Chapter 60, Section 640 through 645, of Mason's Manual of Legislative Procedure and that not more than four (4) shall be from the same political party.

BE IT FURTHER RESOLVED, that the committee shall conduct its investigation of the members qualifications, under Part VI "Legislative and Administrative Bodies", Chapter 51 "Election and Qualifications of Members", Sections 560 through 564, of Mason's Manual of Legislative Procedure.

BE IT FURTHER RESOLVED, that the committee shall report out to the Committee of the Whole any and all "Tie Votes" with no consideration.

BE IT FURTHER RESOLVED, that the committee also address the issues as they may be in conflict with "The Montana Corrupt Practices Act" Chapter 47, Title 23, R.C.M. 1947.

BE IT FURTHER RESOLVED, that if the committee deems it necessary to pass out a verdict that such committee shall also consider the punishment equal to the offense, if there be one.

Approved April 17, 1975.

HOUSE RESOLUTION NO. 6

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING CERTAIN LEGISLATIVE OFFICERS AND EMPLOYEES TO COMPLETE THE BUSINESS OF THE REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE, AND TO PROVIDE COMPENSATION FOR EMPLOYEES TO PREPARE ANY BUSINESS OF ANY SPECIAL SESSION OF THE FORTY-FOURTH LEGISLATURE AND TO PREPARE THE BUSINESS OF THE FORTY-FIFTH LEGISLATURE.

WHEREAS, the completion of business of the regular session of the Forty-fourth Legislature encompasses the employment of certain legislative officers and employees of the House of Representatives, and

WHEREAS, the preparation of business of any special session of the Forty-fourth Legislature or the Forty-fifth Legislature encompasses the employment of certain legislative officers and employees of the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the officers and employees of the House of Representatives herein

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named, are hereby employed by the House of Representatives of the regular session of the Forty-fourth Legislature of the state of Montana to complete the business of that session:

1. Pat McKittrick, Speaker of the House
2. John Driscoll, Majority Leader
3. Lloyd Lockrem, Minority Leader
4. Ed Smith, Chief Clerk
5. Martha McGee, Asst. Chief Clerk
6. Virginia Broughton, Sec./Speaker of the House
7. Bobbie Murphy, Sec./Majority Leader
8. Carol Williams, Sec./Chief Clerk
9. Bea Burr, Sec./Asst. Chief Clerk
10. Linda Barrett, Journal Clerk
11. Betty Wing, Asst. Journal Clerk
12. Pat Tyanich, Bills Clerk
13. Diann Fradette, Asst. Bills Clerk
14. Mel McGuinn, Sec./Minority Leader
15. Shaun Devine, Bills Coordinator
16. Wanda Gough, Chief Stenographer—Close Pool
17. Vickie Kroll, Asst. Chief Stenographer—Close Pool
18. Jo Lahti, Secretary—Close Pool
19. Thelma Fleming, Appropriations Secretary
20. Dianna Danichek, Payroll Clerk
21. Gladys Carpenter, Proofreader
22. Bob Stephens, Sgt.-at-Arms
23. Steve Carney, Asst. Sgt.-at-Arms
24. Clyde Neu, Asst. Sgt.-at-Arms
25. Ralph Irving, Asst. Sgt.-at-Arms
26. Pat Bauernfeind, Judiciary Committee Secretary
27. Margo Voermans, Amendments Clerk—Conference Committee and Reference Work
28. Gloria Barrett, Stenographer—Last Minute typing, etc.
29. Julie Applebury, Censure Committee
30. Jeanne Nydygger, Appropriations and Censure Committee
31. Pat Murry, Proofreader—Copy Secretaries' Books

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32. Velma Reber, Proofreader—Journal

33. Bunny Zins, Proofreader—Journal

34. Jack Mehlhose, to assist Rep. Gould

35. Monida Vaughn, Legislative Business Manager

36. Garry South, Public Information Director—1 day

BE IT FURTHER RESOLVED, that the payrolls covering each employment shall be authenticated by the Speaker of the House of Representatives and the Legislative Business Manager and payment of the same shall be made separate and out of funds appropriated for the regular session of the Forty-fourth Legislature at the rate specified in House Joint Resolution No. 5, effective January 28, 1975, or from any new funds appropriated for such purposes, and

BE IT FURTHER RESOLVED, that legislative officers and employees for any special session of the Forty-fourth Legislature or the Forty-fifth Legislature shall be employed and compensated at the same prescribed rate as defined in House Joint Resolution No. 5, until such time as the rates are changed by the House of Representatives, and

BE IT FURTHER RESOLVED, that this resolution will be effective upon adoption by the House of Representatives.

Approved April 16, 1975.

HOUSE RESOLUTION NO. 7

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE LEGISLATIVE FISCAL ANALYST TO PREPARE A PAY PLAN FOR LEGISLATIVE OFFICERS AND ATTACHES FOR CONSIDERATION BY THE FORTY-FIFTH LEGISLATURE.

WHEREAS, legislative officers and attaches are employed on a part-time basis by the legislature, and

WHEREAS, legislative officers and attaches are exempt from the classification and compensation act for state employees, and

WHEREAS, the legislature spends a considerable amount of time at the beginning of each session preparing a pay schedule for its officers and attaches, and

WHEREAS, the pre-session establishment of a pay plan for legislative officers and attaches would eliminate the necessity of the legislature considering a pay schedule for its employees each and every session.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Fiscal Analyst is directed to study and prepare a pay plan for legislative officers and attaches.

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BE IT FURTHER RESOLVED, that the Legislative Fiscal Analyst report the pay plan to the Forty-fifth Legislature for its consideration.

BE IT FURTHER RESOLVED, that the Secretary of State provide a copy of this resolution to the Legislative Fiscal Analyst.

Approved April 19, 1975.

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

THAT THE FOLLOWING RULES ARE ADOPTED:

SENATE RULES

CHAPTER 1

Presiding Officer — Decorum, Order and Debate

S1-1. At the beginning of each biennium the senate shall choose a president from its membership who shall be the presiding officer. In case of the absence or disqualification of the president, the president pro tempore of the senate shall perform the duties of the president until the vacancy is filled or the disability removed.

S1-2. The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The senate shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

S1-3. The president and president pro tempore, when acting as presiding officer of the senate, shall vote as any other member of the senate.

S1-4. The president may name a senator to perform the duties of the chair, when the president pro tempore is not present in the senate chamber. The senator who is so named is vested during such time with all the powers of the president; but he does not lose the right to vote on any question while presiding.

S1-5. No senator shall speak more than twice on any one motion or question without unanimous consent of the senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a senator who has spoken shall not speak again on the same motion or question to the exclusion of a senator who has not spoken.

S1-6. On order of business No. 8 — In addition to other methods a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question

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indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S1-7. Only the following persons may be admitted to the floor of the senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio and television, former legislators. The rules committee shall be allowed to make exceptions for visiting dignitaries.

CHAPTER 4
Order of Business

S4-1. On order of business No. 2 (reports of standing committees), no debate shall be had on any report unless a minority report has been submitted. Any member seeking a reconsideration of the senate's action on the adoption of a committee report shall do so on order of business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

A bill reported from committee without recommendation shall be ordered printed and placed on second reading.

CHAPTER 5
Motions

S5-1. All proper motions on second reading are debatable. If a motion to reconsider third reading action on a bill or resolution is carried, there shall be no further action on that bill or resolution until the succeeding legislative day.

CHAPTER 6
Bills and Resolutions

S6-1. Any bill or resolution may be introduced during a special session, provided however, that the Rules Committee shall determine which bills or resolutions shall be considered during a special session, including bills or resolutions carried over from previous sessions. This rule shall apply to both house and senate bills or resolutions.

CHAPTER 7
Committees

S7-1. The senate shall elect a committee on committees consisting of 3 members. The committee on committees, with the approval of the senate, shall appoint standing and select committees of the senate, and senate membership on joint committees except conference committees and special committees. The president shall appoint all conference committees and special committees with the advice of the majority and minority floor leaders. The senate may change the membership of any committee on one day's notice.

The standing committees of the senate are as follows:

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1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry
4. Education
5. Finance and Claims
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration
10. Local Government
11. Natural Resources and Fish and Game
12. Public Health, Welfare and Safety
13. Rules
14. State Administration
15. Taxation

S7-2. The majority leader shall be an ex-officio member of all committees in order to establish a quorum.

S7-3. If any final vote on a bill in a standing committee results in a tie vote, the bill shall be reported out of committee without recommendation and advanced to second reading without further motion.

S7-4. When a conference committee report is filed with the secretary, the same shall be read under order of business No. 3, Select Committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day.

CHAPTER 8
Rules and Journal

S8-1. (1) A motion to amend or adopt a rule of the senate shall be referred to the committee on rules without debate. A rule of the senate may only be amended or adopted with the concurrence of a majority of the senate and after one day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S8-2. Mason's Manual of Legislative Procedure governs the proceedings of the senate in all cases not covered by these rules.

CHAPTER 10
Nominations from the Governor

S10-1. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by the constitution or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a

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vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.

S10-2. When nominations are sent by the governor to the senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the governor on the last legislative day of the session, which shall be acted upon that day.

Approved January 8, 1975.

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING CERTAIN LEGISLATIVE OFFICERS AND EMPLOYEES TO PREPARE THE BUSINESS OF THE REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE AND TO BE PAID THEREFOR.

WHEREAS, the preparation of business of the regular session of the Forty-fourth Legislature encompasses the employment of certain legislative officers and employees, and

WHEREAS, the Senate is authorized, by joint resolution of the Forty-fourth Legislature, to employ certain legislative officers and employees of the Senate, and

WHEREAS, it was necessary that some of these officers and employees begin work prior to the convening of the session, and

WHEREAS, funds remain from the Forty-third legislative appropriation which may be used to cover these payrolls.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the officers and employees of the Senate herein named, are hereby employed by the Senate of the regular session of the Forty-fourth Legislature of the state of Montana to prepare the business incident to and consequent upon the convening of the regular session of the Forty-fourth Legislature, and that they may be paid for the hours of work listed.

OFFICERS AND EMPLOYEES	NO. OF DAYS AND HOURS
President of the Senate	1 (per diem)
Secretary of the Senate	28
Sergeant-at-arms	2
Assistant Secretary of the Senate	3
Secretary to the Secretary of the Senate	1 3 ½
Secretary to the Assistant Secretary of the Senate	3
Journal Clerk	3

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Assistant Journal Clerk		3
Bills Clerk		6
Assistant Bills Clerk		6
Bills Coordinator		2
Bills Distributor		7
Assistant Bills Distributor		7
Chief Stenographer	10	4
Committee Secretary - Judy Hietala		3
Secretary to the President	1	4
Secretary to the Majority Leader	2	4 ½
Secretary to the Minority Leader		6 ¼
Assistant Sergeant-at-Arms:		
James Chirgwin	1	
James Meldrum	1	
Ralph Erving	11	4
Senate Doorkeeper	5	5 ½
Assistant Business Manager	21	3 ¾

BE IT FURTHER RESOLVED, that the payrolls covering each employment shall be authenticated by the President of the Senate and the Legislative Business Manager and payment of the same shall be made separate and out of funds appropriated to the Senate for the second regular session of the Forty-third Legislature at the rate specified in House Joint Resolution No. 5, effective January 28, 1975.

Approved March 17, 1975.

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING THE PRESIDENT OF THE SENATE TO APPROVE THE EMPLOYMENT OF SENATE OFFICERS AND EMPLOYEES NECESSARY TO COMPLETE THE BUSINESS OF THE FORTY-FOURTH LEGISLATURE.

WHEREAS, the completion of business of the Forty-fourth Legislature necessitates the continued employment of certain legislative officers and employees; and

WHEREAS, House Joint Resolution No. 5 of the Forty-fourth Legislature provides that the presiding officer of each house may authorize the Committee on Legislative Administration to continue the employment and compensation of officers and employees after adjournment if provided by simple resolution of each house.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the President of the Senate is authorized by the Senate Committee on Legislative Administration and the Senate of the Forty-fourth Legislature to employ and continue the employment of officers and employees

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necessary to complete all unfinished business incident to and consequent upon the Forty-fourth Legislature.

Approved April 16, 1975.

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING THE UPDATING OF THE SENATE VOTING SYSTEM AND THE REFINISHING OF THE ROSTRUM.

WHEREAS, a contract between the International Roll Call Corporation and the Montana Senate allows periodic updating and improvement to the Senate Voting System; and

WHEREAS, there have been certain improvements made in the system that should be installed in Montana; and

WHEREAS, in order to update the voting system, the purchase of some equipment is mandatory and purchase of other equipment is optional but available at a reduced cost if purchased at the time of the update to the system; and

WHEREAS, it will be feasible to refinish the Senate rostrum following installation of new voting equipment; and

WHEREAS, approximately $42,000 is available from the appropriation made to the Senate of the Forty-third Legislature for operation and equipment of the Senate of the Forty-fourth Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That this body approves the expenditure of twenty thousand nine hundred and thirty-two dollars ($20,932) to purchase electronic roll call equipment from International Roll Call Corporation to be installed at the time of the update to the Senate Voter System.

BE IT FURTHER RESOLVED, That this body approves the expenditure of seven thousand seven hundred dollars ($7,700) to refinish the Senate rostrum.

BE IT FURTHER RESOLVED, That the Senate leadership is authorized to determine equipment specifications, time schedules, and any other matters necessary to carry out the purpose of this resolution.

Approved April 19, 1975.

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING THE LEGISLATIVE FISCAL ANALYST TO PREPARE

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A PAY PLAN FOR LEGISLATIVE OFFICERS AND ATTACHES FOR CONSIDERATION BY THE FORTY-FIFTH LEGISLATURE.

WHEREAS, legislative officers and attaches are employed on a part-time basis by the legislature, and

WHEREAS, legislative officers and attaches are exempt from the classification and compensation act for state employees, and

WHEREAS, the legislature spends a considerable amount of time at the beginning of each session preparing a pay schedule for its officers and attaches, and

WHEREAS, the pre-session establishment of a pay plan for legislative officers and attaches would eliminate the necessity of the legislature considering a pay schedule for its employees each and every session.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Legislative Fiscal Analyst is directed to study and prepare a pay plan for legislative officers and attaches.

BE IT FURTHER RESOLVED, that the Legislative Fiscal Analyst report the pay plan to the Forty-fifth Legislature for its consideration.

BE IT FURTHER RESOLVED, that the Secretary of State provide a copy of this resolution to the Legislative Fiscal Analyst.

Approved April 19, 1975.

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA EXPRESSING THE UNDERSTANDING OF THE SENATE AS TO THE CUMULATIVE EFFECT OF VARIOUS AMENDMENTS TO SECTIONS 84-202 AND 84-301, R.C.M. 1947.

WHEREAS, numerous bills have been enacted or sent to the governor which amend in different fashions a few key taxation statutes codified in Title 84, R.C.M 1947, and

WHEREAS, in prior years, the publisher of the Revised Codes of Montana has been obliged, in such situations, to assemble a composite code section without any indication of the intent or understanding of the legislature as to the cumulative effect of multiple amendments of such sections, and

WHEREAS, the arrangement and ordering of a section of the Revised Codes of Montana is a legislative responsibility and the intent of the legislature as to such matters should be expressed in an appropriate manner.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That it is the understanding of the Senate, if Senate Bill 342 and House Bill 663 are enacted into law, and are read in conjunction with Chapters 8, 325, 341, and 442, Laws of 1975, that section 84-202, R.C.M. 1947, will have been cumulatively amended so as to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and con-

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signed to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403."

BE IT FURTHER RESOLVED, that it is the understanding of the Senate, if Senate Bills 2 and 13, and House Bills 114 and 663 are enacted into law, and are read in conjunction with Chapters 299, 341, 372, 397, and 427, Laws of 1975, that section 84-301, R.C.M. 1947, will have been cumulatively amended so as to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness,

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saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

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Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of

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revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

(d) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under section 84-7403.

Class Eight. (a) Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding five (5) acres, which together have a market value of not more than twenty-seven thousand five hundred dollars ($27,500), which dwelling is owned or under a contract for deed, and which is actually occupied for at least ten (10) months per year as the primary residential dwelling of:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than six thousand dollars ($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and

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mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

(b) A capital investment in a building for an energy conservation purpose, to the extent provided under section 84-7403.

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining, or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes."

BE IT FURTHER RESOLVED, that if any of the foregoing bills fails to be enacted into law, that the understanding of the Senate as to the arrangement of sections 84-202 and 84-301, as expressed in this resolution, is modified only by deletion of the amendatory material not enacted and conforming the rearrangement of enacted amendatory material to such deletion.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send a copy of this resolution to the Allen Smith Company, Indianapolis, Indiana.

Approved April 19, 1975.

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING THE SENATE LEADERSHIP TO INVESTIGATE THE PURCHASE OF A CHARLES RUSSELL PAINTING FOR THE SENATE CHAMBERS.

WHEREAS, the Senate has voted to remodel the Chamber, especially the area of the rostrum, and

WHEREAS, the Senate does not have a Russell painting, and

WHEREAS, the magnificent painting "When the Land Belonged to God" could be sold and leave the state, and

WHEREAS, that painting would add great esthetic appeal to this Chamber and could be viewed by the thousands of visitors that pass through the Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

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That the leadership on both sides of the aisle, as a team, investigate the possibility of buying that painting from the owners.

BE IT FURTHER RESOLVED, that the remodeling in the area of the rostrum be done with the idea that the painting might be purchased or borrowed and hung there.

Approved April 18, 1975.

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CHANGES IN NAMES DECREED IN 1974

Date of Judgment	Original Name	Name Decreed	Residence
**May 10, 1973	Franz M. Wanner	Francis M. Warner	Glendive
	**County inadvertently did not report for 1973		
Jan. 2, 1974	Ronald Erick Westlund	Rick Erick Westlund	East Helena
Jan. 7, 1974	Linda Anne Gessner	Heather Anne Duffy	Helena
Jan. 7, 1974	Edith M. Sperry	Edith M. Gregerson	Harlowton
Jan. 8, 1974	James Arthur Albertano	James Arthur Albert Stone	Jordan
Jan. 9, 1974	Audrey Kienenberger	Audrey Crawford	Cut Bank
Jan. 24, 1974	Geneva Young	Geneva Axley	California
Feb. 1, 1974	James Francis Little	James Francis Kilmer	Butte
Feb. 1, 1974	Robert James Little	Robert James Kilmer	Butte
Feb. 4, 1974	Judith I. Brown	Judith I. Gillespie	Harlowton
Feb. 4, 1974	Mary Kay Ross	Kristen Ross	Yellowstone Co.
Feb. 5, 1974	Rodolfo Robert Burgard	Rodolfo Robert Patterson	Livingston
Feb. 11, 1974	William Ronald Harvey	Liam Beauchamp Bagenal O'Hairmheadhaigh	Helena
Feb. 11, 1974	Marie Kathryn Van Auken	Maria Catherine Van Auken	Kalispell
Feb. 13, 1974	Laurel Contway	Laurel Villett	Malta
Feb. 20, 1974	Tibor Cornel Sorger	Tibor Paul Mazor	Great Falls
Feb. 22, 1974	Rickey Van Efaw	Rickey Van Haley	Yellowstone Co.
Feb. 28, 1974	David Michael Guay	David Michael Lavelle	Butte
Feb. 28, 1974	Christine Louise Guay	Christine Louise Lavelle	Butte
Mar. 6, 1974	Richard Salois	Richard Leo Sinclair	Glacier Co.
Mar. 6, 1974	Merlin Salois	Merlin William Sinclair	Glacier Co.
Mar. 6, 1974	George St. Clair Salois	George Lawrence Sinclair	Glacier Co.
Mar. 6, 1974	Marlin (Marlene) Salois	Marlene Marie Sinclair	Glacier Co.
Mar. 6, 1974	Galene Salois	Gaylene Elizabeth Sinclair	Glacier Co.
Mar. 14, 1974	Linda Kaupish	Linda Leonard	Butte
Mar. 18, 1974	Timothy James Sealbrook	Timothy James Duran	Butte
Mar. 26, 1974	Donna Whaley Miller	Donna Whaley	Trout Creek
Mar. 28, 1974	Oliver Ernest Blair	Oliver Ernest York	Missoula Co.
Mar. 29, 1974	Lydia Marie Brown	Marilee Brown	Libby
Mar. 29, 1974	Frank Harper Dunkle, Jr.	Frank Harper Dunkle	Helena
Mar. 29, 1974	Orville Dale Otis	Lee Mason	Billings
Apr. 3, 1974	Darlene A. Pankratz	Darlene Korsbeck	Malta
Apr. 9, 1974	Shawna Rose Wilson	Shawna Rose Holliday	Butte
Apr. 9, 1974	Billie Ann Wilson	Billie Ann Holliday	Butte
Apr. 9, 1974	Robin Renee Wilson	Robin Renee Holliday	Butte
Apr. 10, 1974	Dayle Kathleen Marion	Dayle Kathleen Kinyon	Sweet Grass
Apr. 11, 1974	Kimberly Kinne	Kimberly Goldner	Bozeman
Apr. 15, 1974	Mae G. Hagberg	Mae G. Copelan	Harlowton
Apr. 15, 1974	Patricia L. Hunter	Patricia L. Erbe	Helena
Apr. 17, 1974	Marion Baird Trujillo	Marion Baird Feistner	Polson
Apr. 18, 1974	Tammy Kay Denton	Tammy Kay Olsen	Helena
Apr. 18, 1974	Ruth Auguste Espinoza	Ruth Auguste Guesella	Great Falls
Apr. 18, 1974	Virginia Wade Huseby	Virginia Wade	Big Timber
Apr. 19, 1974	Marshall Ryan Donovan	Marshall Ryan Bailey	Ravalli Co.
Apr. 19, 1974	Violet M. Thibault	Violet M. Hoffman	Miles City
Apr. 23, 1974	Florence I. Wolff	Florence I. Schaffer	Hot Springs
Apr. 26, 1974	Robert Eugene Greger	Robert Eugene Coleman	Billings
Apr. 29, 1974	Connie Jean Ethen	Connie Jean Kelly	Glendive
Apr. 29, 1974	Ricky Ray Schadt	Ricky Ray Nelson	Bozeman
May 1, 1974	Dennis Roy McMaster	Dennis Roy Crawford	Great Falls
May 2, 1974	Margaret Elizabeth Seaberg	Margaret Elizabeth Dawson	Deer Lodge
May 3, 1974	Wanda Faye Boatwright	Juanita Faye Boatwright	Great Falls
May 6, 1974	Jack Nicholson	John Stucky	Bozeman
May 6, 1974	Jan Elma Nicholson	Jan Elma Stucky	Bozeman
May 9, 1974	Catherine Lee Everard	Catherine Lee Manis	Missoula Co.
May 9, 1974	Daniel James Ferrlan	Daniel James Nichols	Whitehall
May 9, 1974	Richard David Ferrlan	Richard David Nichols	Whitehall
May 13, 1974	John Vernon Muscenski a/k/a John Vernon Musin	John Vernon Mason	Yellowstone Co.
May 13, 1974	James Richard Riesinger	James Richard Bender	Laurel
May 15, 1974	Cherie Dianne Perkins	Cherie Dianne Neuman	Miles City
May 20, 1974	Bernadette Marie Ridesathedoor	Mitzie Marie Syth	Billings
May 23, 1974	Brenda Leah Segmiller	Brenda Leah Holwegner	Yellowstone Co.
May 29, 1974	Corey Alan Peterson	Corey Alan Rusinski	Anaconda
May 30, 1974	Luellva Lavern Jenne	Peach Jenne	Missoula Co.
June 3, 1974	June Knudsen Brown	June Knudsen	Bozeman

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CHANGES IN NAMES DECREED IN 1974

Date of Judgment	Original Name	Name decreed	Residence
June 3, 1974	Cheryl Lynn Haggerty	Cheryl Lynn Higgins	Miles City
June 3, 1974	Marilyn J. Powderface	Marilyn J. Gone	Bozeman
June 5, 1974	Bonnelle M. Schmidt	Bonnelle M. Miller	Dillon
June 5, 1974	Danial Everett Schmidt	Danial Everette Miller	Dillon
June 5, 1974	Thomas Steven Wolchuk	Thomas Steven Walchuk	Polson
June 5, 1974	Evadeane Marie Wolchuk	Evadeane Marie Walchuk	Polson
June 5, 1974	Laurence Steven Wolchuk	Laurence Steven Walchuk	Polson
June 5, 1974	Marvin Walter Wolchuk	Marvin Walter Walchuk	Polson
June 5, 1974	Theresa Evadeane Wolchuk	Theresa Evadeane Walchuk	Polson
June 10, 1974	Jay Leon Davis	Jan Leon Belnap	Bozeman
June 10, 1974	Dee Layne Davis	Dee Layne Belnap	Bozeman
June 10, 1974	Kim L. Davis	Kim L. Belnap	Bozeman
June 17, 1974	Susan Allan Bridgewater	Susan Allan Devlin	Missoula Co.
June 20, 1974	Louise Audry Contway	Hazel Frankie Hutchins	Deer Lodge
July 1, 1974	An'dre Capps	An'dre Anderson	Missoula Co.
July 9, 1974	Linda L. Masa	Linda L. Coughlin	Miles City
July 15, 1974	Gregory Duwayne Johnson	Gregory Duwayne Courchane	Havre
July 18, 1974	Robert Paul Rossignol	Robert Paul DeCarlo	Missoula Co.
July 22, 1974	Jan E. Maixner	Jan E. Girard	Bozeman
July 26, 1974	Charlene Dickey	Charlene Angelly	Butte
July 31, 1974	Donald Rodney Dargan	Rod Gwaltney	Helena
July 31, 1974	Karen Elaine Dargan	Karen Elaine Gwaltney	Helena
Aug. 6, 1974	Ronald Mattson	Ronald Golyer	Butte
Aug. 6, 1974	Kay Lynn Mattson	Kay Lynn Golyer	Butte
Aug. 6, 1974	Michael Mattson	Michael Golyer	Butte
Aug. 7, 1974	Sandra D. Dvorshak	Sandra D. Licht	Dodson
Aug. 8, 1974	William James Garland	William James Kudlacek	Not given
Aug. 12, 1974	Donald Joe Jackson	Donald Joe Taurman	Missoula Co.
Aug. 13, 1974	Earlyn K. Collins	Earlyn K. VanCampen	Plains
Aug. 20, 1974	Edna Joyce Browning	Peggy Joyce Browning	Great Falls
Aug. 20, 1974	Cornelio Vincent Veto	Vincent Veto, Jr.	Livingston
Aug. 27, 1974	Lora M. West	Lora M. Moore	Dixon
Sept. 3, 1974	Thomas Charles Lukkes	Charles James Lukkes	Columbus
Sept. 5, 1974	Gordon Adam Meidinger	Gordon Adam Beier	Missoula
Sept. 5, 1974	Stella G. Vanderhoef	Stella D. Redman	Sweet Grass
Sept. 11, 1974	Norbert Anthony Gotner Jr.	Richard Anthony Gotner	Great Falls
Sept. 12, 1974	Mary Ann Malley	Mary Ann Strom	Miles City
Sept. 16, 1974	Kerry Kramlich	Kerry Knerr	Harlowton
Sept. 17, 1974	Nora Fisher Ferguson	Nora Fisher	Trout Creek
Sept. 23, 1974	Beatrice M. Stickelmeyer	Beatrice M. MacDonald	Miles City
Sept. 24, 1974	Alta L. Smith	Alta L. Sneath	Thompson Falls
Sept. 25, 1974	Frank Orin Chernicky	Richard Frank Chernicky	Great Falls
Sept. 27, 1974	Ahmad Joseph Al-Nouri	Joseph Gilman Al-Nouri	Butte
Sept. 27, 1974	Ghanim Ahmad Al-Nouri	Samuel Gilman Al-Nouri	Butte
Sept. 30, 1974	Donnie Lee Weidner	Donald Lee Ludwig	Glendive
Oct. 1, 1974	Evelyn Loraine Nove	Barbara Lee Eyrl	Kalispell
Oct. 4, 1974	Lucille J. Schneller	Lucille J. Smith	Butte
Oct. 7, 1974	McKinley Brent Anderson	Brent Charles Anderson	Bozeman
Oct. 7, 1974	Lea Nadine Carlson	Lea Nadine Shaw	Bozeman
Oct. 8, 1974	Landon Lea Domsten	Pomper Landon Lea Domsten	Plentywood
Oct. 16, 1974	Tammi Roianne Randall	Tammi Roianne Marti Mathews	Yellowstone Co.
Oct. 17, 1974	Eithel Dotson	Trixie McCormick	Ovando
Oct. 17, 1974	Donald Eugene Penland	Donald Eugene Sweeney	Bozeman
Oct. 17, 1974	Sandra Lee Raymond	Sandra Lee Braughton	Sweet Grass Co.
Oct. 21, 1974	Dwight Paul Califf	Dwight Paul Fleck	Yellowstone Co.
Oct. 22, 1974	Carol V. South	Carroll V. South	Miles City
Oct. 23, 1974	Diane Schiefelbein	Diane Lesmeister	Havre
Oct. 25, 1974	Cheryl J. Derrickson	Cheryl J. Smith	Butte
Oct. 28, 1974	Mollie Rhea Brewer	Mary Virginia Brewer	Miles City
Nov. 1, 1974	Floyd Robert Fairbairn	Floyd Robert McFarren	Yellowstone Co.
Nov. 1, 1974	Robert Lawrence Nanoff	Robert Jay Davey	Havre
Nov. 6, 1974	Charles William King	Charles William King Shandy	Livingston
Nov. 6, 1974	Marie Guadalupe Soto Marshall	Maria Guadalupe Soto	Lelano, Calif.
Nov. 6, 1974	Ronald Walter Wagmore	Ronald Walter Day	Anaconda
Nov. 14, 1974	Christine Larsen Tollefsen	Christine Larsen	Missoula Co.
Nov. 18, 1974	Peggy A. Gardiner	Peggy A. McMillan	Yellowstone Co.
Nov. 18, 1974	Bobbi Leigh Rockman	Bobbi Leigh Henderson	Havre
Nov. 18, 1974	Robert Lewis VanDyken	Robert Lewis Lombardo	Helena

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CHANGES IN NAMES DECREED IN 1974

Date of Judgment	Original Name	Name decreed	Residence
Nov. 25, 1974	Jeffrey Mana Letman	Jeffrey Mana Langan	Bozeman
Nov. 27, 1974	Norton C. Lotvedt	Norton C. Lotvedt Lokked	Great Falls
Nov. 27, 1974	Natalie C. Lotvedt	Natalie C. Lotvedt Lokked	Great Falls
Nov. 29, 1974	Randy Ray Rummel	Ramdy Ray Pauley	Kalispell
Dec. 5, 1974	Peter Nicholson	F. Peter Nicholson	Butte
Dec. 9, 1974	Clara Ellen Jacob	Clara Ellen Derenburger	Miles City
Dec. 10, 1974	Alice Baxter	Alice Argo	Plains
Dec. 10, 1974	Anita Ann Taylor	Anita Ann Bonogofsky	Thompson Falls
Dec. 12, 1974	Loretta Marquardt	Loretta Jessica Marquardt	Missoula
Dec. 12, 1974	John David White	Jon William Adams	Helena
Dec. 16, 1974	Paula Marie Gaffke	Paula Marie Gibbs	Bozeman
Dec. 18, 1974	Lucille Cowell	Lucille Sorkness	Havre
Dec. 18, 1974	Leigh E. Hill	Leigh E. Johnson	Trout Creek
Dec. 18, 1974	Shane Todd Hutchinson	Shane Todd Warden	Billings
Dec. 18, 1974	Perry Patrick Hutchinson	Perry Patrick Warden	Billings
Dec. 23, 1974	Minnie C. Miller	Minnie C. Tyler	Not given
Dec. 24, 1974	Gary Lee Faggard	Gary Lee Tanascu	Livingston
Dec. 24, 1974	Robert Wilson Faggard	Robert Wilson Tanascu	Livingston

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APPENDIX

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APPENDIX

CONSTITUTIONAL AMENDMENTS

CONSTITUTIONAL AMENDMENT 1

By Chapter 117, Laws of 1974, the Legislature proposed an amendment to the Constitution of the State of Montana to establish a resource indemnity trust in the state which shall be forever inviolate and guaranteed by the state against loss or diversion.

Chapter 117 was approved by the following vote at the General Election held November 5, 1974:

For:	121,077
Against:	76,252

The text and title of Chapter 117 follow.

An Act to Submit to the Qualified Electors of Montana an Amendment to Article IX, Section 2, of the Constitution of Montana Establishing a Resource Indemnity Trust in the State Which Shall Be Forever Inviolate and Guaranteed by the State Against Loss or Diversion.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IX, section 2, of the constitution of the state of Montana is amended to read as follows:

"Section 2. Reclamation. *(1)* All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion."

Section 3. When this amendment is submitted to the electors of the state of Montana there shall be printed on the ballot the full title and section 1 of this act and the following words:

"☐ For the above amendment.

☐ Against the above amendment."

CONSTITUTIONAL AMENDMENT 2

By Senate Joint Resolution No. 64, Laws of 1974, the Legislature proposed an amendment to the Constitution of the State of Montana to allow

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the Legislature, by a ⅔ vote of each house, to enact laws relating to the waiver of sovereign immunity.

Senate Joint Resolution No. 64 was approved by the following vote at the General Election held November 5, 1974:

For:	108,704
Against:	87,626

The text and title of Senate Joint Resolution No. 64 follow.

A Joint Resolution of the Senate and the House of Representatives of the State of Montana Submitting to the Qualified Electors of the State of Montana an Amendment to the Constitution of Montana Amending Article II, Section 18 of the Constitution, Relating to Waiver of Sovereign Immunity by the State of Montana.

Be it resolved by the Senate and the House of Representatives of the State of Montana:

That there be submitted to the qualified electors at the next general election a proposal for an amendment to the constitution of the state of Montana.

BE IT FURTHER RESOLVED, than the proposal shall read as follows: "It is proposed by the legislature of the state of Montana that Article II, Section 18 of the Montana constitution be amended to read as follows: "Section 18. STATE SUBJECT TO SUIT. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a ⅔ vote of each house of the legislature.""

BE IT FURTHER RESOLVED, that this full text of the above proposal be printed on the ballot along with the following words:

"☐ For the above amendment.

☐ Against the above amendment."

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the Secretary of State on its final passage.

CONSTITUTIONAL AMENDMENT 3

By Initiative, the people proposed an amendment to the Constitution of the State of Montana to provide for 90 day biennial legislative sessions.

The Initiative was approved by the following vote at the General Election held November 5, 1974:

For:	110,587
Against:	104,581

The text of the Initiative amendment follows.

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"Section 6. Sessions. The legislature shall meet *each odd-numbered* year in regular session of not more than *90* legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members."

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